

Tuesday, 4 June, 1946

INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
"War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,

at 0930.

10 | Appearances:

11 For the Tribunal, same as before.

12 For the Prosecution Section, same as before.

13 For the Defense Section, same as before with

14 the addition of: MR. LAWRENCE McMANUS, counsel for

15 Accused ARAKI, Sadao; MR. FRANKLIN E. N. WARREN, counsel

16 for Accused DOIHARA, Kenji; MR. DAVID F. SMITH, counsel

17 for Accused HIROTA, Koki; MR. GEORGE C. WILLIAMS, coun-

13 sel for Accused HOSHINO, Naoki; MR. JAMES N. FREEMAN,

12 | counsel for Accused SATO, Kenryo; MR. WILLIAM LOGAN,

20 counsel for Accused KIDO, Koichi; CAPTAIN ALFRED BROOKS,

21 | counsel for Accused KOISO, Kuniaki; MR. JOSEPH C.

22 HOWARD, counsel for Accused KIMURA, Heitaro; MR. OWEN

23 CUNNINGHAM, counsel for Accused OSHIMA, Hiroshi; MR.

24 EDWARD P. McDERMOTT, counsel for accused SHIMADA,

25 Shigetaro; MR. CHARLES R. CAUDLE, counsel for Accused

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1 SHIRATORI, Toshiro; and MR. FLOYD J. MATTICE, counsel
2 for Accused MATSUI, Iwane.

3 - - -

4 (English to Japanese and Japan-
5 ese to English interpretation was
6 made by NORI, Tomio and SHIMANOUCHI,
7 Toshiro of statements by the Presi-
8 dent and statements from the floor,
9 Hidekazu Hayashi acting as Monitor.)

10 MARSHAL OF THE COURT: The International
11 Military Tribunal for the Far East is now resumed and
12 is ready to hear any matter brought before it.

13 THE PRESIDENT: All the accused are present
14 except OKAWA and MATSUOKA.

15 I proceed to give the Tribunal's reserved
16 decisions:

17 In the matter of an application by OKAWA,
18 Shumei: This is an application on behalf of the
19 accused OKAWA for the transfer of the accused to the
20 psychiatric ward of the Tokyo Imperial University
21 Hospital for care and treatment. The evidence
22 indicates that the accused is at present suffering
23 from a serious mental disease or disorder. We
24 authorize his removal to the psychiatric ward of the
25 Tokyo Imperial University Hospital for care and

1 treatment, but subject to such provisions for securing
2 his proper custody therein as may be directed by the
3 Supreme Commander.

4 OKAWA also applies to have his name struck
5 from the Indictment or, in the alternative, that the
6 proceedings be stayed as against him until he is mentally
7 capable of pleading. He has not yet been called upon
8 to plead. However, there is as yet no reason to
9 suppose that he will not recover during the progress of
10 this trial so as to be able to plead when called upon.
11 The application is refused. But, if and when the
12 accused is called upon to plead at this trial, the
13 Tribunal will consider whether, in view of the evidence
14 given in his absence, a fair trial can be had by him
15 in these proceedings throughout which he will be repre-
16 sented by his counsel.

17 In the matter of an application by MATSUOKA,
18 Yosuke: This is an application by the accused MATSUOKA
19 for confinement in a private sanitarium and that his
20 name be stricken from the Indictment or, in the alter-
21 native, that the proceedings be stayed as against him
22 on the ground that he is physically incapable of pro-
23 ceeding to trial. The evidence indicates that the
24 accused's condition is low and not likely to improve,
25 but there is no definite evidence that he will not

1 recover.

2 We direct that he be delivered to and kept
3 in the isolation ward of the Tokyo Imperial University
4 Hospital subject to such provisions for securing his
5 proper custody therein as may be directed by the Su-
6 preme Commander. We refuse the application that the
7 accused's name be struck from the Indictment, or that
8 the proceedings be stayed against him. However, the
9 application may be renewed later if further evidence
10 is forthcoming. In the meantime, the accused will
11 be represented by his counsel before the Court, and,
12 as far as we can judge, will be able to instruct coun-
13 sel in the preparation of his defense.

14 In the matter of certain applications by the
15 prosecution: Application is made by the prosecution
16 to present separate phases of the case, each with an
17 opening statement at its commencement. The Tribunal
18 decides that the counsel representing the separate phase
19 of the case shall be at liberty to make an opening
20 statement at the commencement of that particular
21 phase. This is not inconsistent with the fundamental
22 provisions of the Charter but, on the contrary, will,
23 we think, as claimed by the prosecution, tend to attain
24 the objectives of Article 12, sub-sections a and b.
25 The defense would not in any way be prejudiced.

1 The Tribunal also orders that the prosecution
2 be at liberty to produce in court documents, obtained
3 from the Japanese Government offices, purporting to
4 be records and files from such offices, without further
5 authentication. Section 13d of the Charter provides
6 that the Tribunal shall not require proof of the
7 authenticity of the official government documents
8 and the reports of any nation. The purpose of the
9 prosecution is to obviate the needs for hundreds of
10 certificates of authenticity. Each of the accused
11 will have the right to object to the admission of any
12 document on the ground that it is immaterial or ir-
13 relevant, or on any other substantial ground. The
14 admission of these documents will be in all cases
15 subject to all just exceptions and objections.

16 The Tribunal refuses the application of the
17 prosecution that it take judicial notice of each of
18 the ninety-five events that appear in Schedule A
19 of the application. As a matter of fact, counsel for
20 the prosecution explained that it was not desired that
21 the Tribunal should take judicial notice of these
22 events, but should merely judicially notice the fact
23 that the particular event occurred on a particular
24 date without deciding the details of that incident.
25 It seems to us, however, that proof of the incident

1 necessarily involves proof of the dates thereof, and
2 that nothing substantial is to be gained by judicially
3 noticing the dates independently of the events.

4 In view of the vital importance of this
5 matter, we have decided to consider, at the time the
6 question is raised in the ordinary course of the pro-
7 ceedings, whether any event should be judicially noticed.

8 The Tribunal gives liberty to the prosecution to pro-
9 duce the documents listed in Schedule B of the appli-
10 cation without formal proof thereof but subject, of
11 course, to all just exceptions involving the accuracy,
12 relevancy and materiality of the documents. Subject
13 to such exceptions, the Tribunal will not require
14 proof of the authenticity of the documents and shall
15 receive them in evidence.

16 The Tribunal directs that all exhibits tender-
17 ed in evidence by the prosecution and the defense be
18 numbered consecutively according to the order of their
19 production.

20 Application by the defense to make separate
21 opening statements: We think the position is covered
22 by Article 15c of the Charter which proves that each
23 accused may make a concise opening statement. We
24 take that as authorizing the statement to be made by
25 the accused immediately before his evidence is given

1 in each case. There is no need, therefore, for the
2 application which is formally dismissed.

3 Mr. Chief Prosecutor:

4 MAJOR BLAKENEY: May it please the Tribunal,
5 in regard to the order on judicial notice of events,
6 may I simply suggest the correction that the list of
7 events in question extends not to ninety-five but to
8 one hundred and thirty-two, all of which, I take it,
9 were referred to by the President's order.

10 THE PRESIDENT: Whatever the number is in
11 the application, we will insert it in the order.

12 MAJOR BLAKENEY: That is what we had in
13 mind.

14 Before the Chief Prosecutor commences his
15 address, may I make this announcement on behalf of
16 all defendants: We have been furnished with a copy
17 of the opening address in accordance with the rules,
18 and various defendants have certain objections to
19 language or statements contained therein. But, in
20 order to avoid the distracting effect of objections
21 by defendants as the statement is read to the Tri-
22 bunal, we should like, subject to the approval of the
23 Tribunal, to have the right to lump all of our objections
24 to the statement at the conclusion of the opening state-
25 ment. I am given to understand also that the language

1 problem, from which we have as yet been unable to escape,
2 has created certain difficulties in connection with the
3 Japanese translation of this address, concerning which
4 Dr. KIYOSÉ would like to say just a word to the Court
5 to explain their position.

6 THE PRESIDENT: The Court grants your application
7 to make all your objections at the conclusion
8 of the opening of the learned Chief Prosecutor.

9 DR. KIYOSÉ: The defense counsel yesterday
10 received the Japanese translation of the opening
11 statement of Chief Prosecutor Keenan. We are very
12 much delighted to have the advance copy; but, in order
13 to avoid confusion later on, we should like to make a
14 few remarks at this moment.

15 From the middle of the first page to the end
16 of the sixth page of the opening statement are missing
17 in the Japanese translation; and, since we are unable
18 to get the full context of the statement by telephone,
19 we should like to have copies thereof.

20 On page 52 of the English text of the opening
21 statement the Potsdam Declaration is quoted, giving the
22 words "stern justice" -- in the Japanese, "stern punishment."
23 Since this translation, being erroneous, would
24 cause embarrassment later on, we should like to have
25 this translation revised before the statement is pre-

1 sented.

2 THE PRESIDENT: Those objections to particu-
3 lar parts of the opening can be lumped, like the other
4 objections of the defendants, at the conclusion of the
5 opening. All rights will be fully preserved thereby.

6 The matter is closed.

7 MR. KEENAN: Mr. President, may I have the
8 honor at this time to present to the Tribunal my
9 friend and colleague, Mr. Robert Oneto, former Assistant
10 Director of the Ministry of Justice, Chief Prosecutor
11 of the Republic on the Court of Assizes of the De-
12 partment of Seine and Marne, and Associate Prosecutor
13 of the Republic of France.

14 Mr. President and members of the International
15 Military Tribunal for the Far East:

16 As Chief of Counsel of the prosecution, it is
17 now my responsibility under the Charter which created
18 this honorable Tribunal, and which likewise provided
19 for the appointment of Associate Prosecutors by the
20 nations participating in this trial, to present to you
21 an outline of our theory of the law under which we
22 are proceeding and the facts which we intend to prove
23 to show that each of the accused now before the Tri-
24 bunal is guilty of the crimes with which he is charged
25 in the indictment.

1 This may well be one of the important trials
2 of history. It is important to the eleven nations here
3 represented, constituting orderly governments of coun-
4 tries containing more than one-half of the inhabitants
5 of the earth. It is important to all other nations and
6 to unborn generations of every nation, because these
7 proceedings could have a far reaching effect on the
8 peace and security of the world.

9 At the very beginning of these proceedings
10 it is essential that those directing the prosecution
11 make clear their purpose. Our broad aim is the order-
12 ly administration of justice; our specific purpose is
13 to contribute all we soundly can towards the end --
14 the prevention of the scourge of aggressive war.

15 Mr. President, this is no ordinary trial,
16 for here we are waging a part of the determined battle
17 of civilization to preserve the entire world from
18 destruction. This threat of destruction comes not
19 from the forces of nature, but from the deliberate
20 planned efforts of individuals, as such and as members
21 of groups who seem willing to bring the world to a
22 premature end in their mad ambition for domination.
23 This is a strong statement, but the facts are such
24 that we find ourselves unable to describe it in more
25 moderate terms.

1 A very few throughout the world, including
2 these accused, decided to take the law into their
3 own hands and to force their will upon mankind. They
4 declared war upon civilization. They made the rules
5 and defined the issues. They were determined to destroy
6 democracy and its essential basis -- freedom and the
7 respect of human personality; they were determined
8 that the system of government of and by and for the
9 people should be eradicated and what they termed a
10 "New Order" established instead. And to this end
11 they joined hands the Hitlerite group; they did it
12 formally, by way of treaty, and they were proud of
13 their confederacy. Together they planned, prepared
14 and initiated aggressive wars against the great democ-
15 racies enumerated in the indictment. They willingly
16 dealt with human beings as chattels and pawns. That
17 it meant murder and the subjugation and enslavement of
18 millions was of no moment to them. That it encompassed
19 a plan or design for the murder in all parts of the world
20 of children and aged, that it envisaged the entire ob-
21 literation of whole communities, was to them a matter
22 of complete indifference. That it should cause the
23 premature end of the very flower of the youth of the
24 world -- their own included -- was entirely beside the
25 point. Treaties, agreements and assurances were treated

1 as mere words -- bits of paper -- in their minds, and
2 constituted no deterring influence to their efforts.
3 Their purpose was that force should be unleashed upon
4 the world. They thought in terms of force and domination
5 and entirely obscured the ends of justice. In this
6 enterprise millions could die; the resources of nations
7 could be destroyed. All of this was of no import in
8 their mad scheme for domination and control of East Asia,
9 and as they advanced, ultimately the entire world. This
10 was the purport of their conspiracy.

11 We are now confronted with this question:
12 Is civilization, today sternly reminded that it is
13 facing a critical phase of its existence, compelled
14 to stand idly by and permit these outrages without
15 an attempt to deter such efforts?

16 No one needs even a slight reminder to realize
17 that wars in our time are quite different from those of
18 old. Today, and far more important still, tomorrow
19 and forever hereafter, wars can be nothing other than
20 total wars. Today and tomorrow all wars have no limit
21 of space or territory. The victims will be the young
22 and the old, the armed and unarmed, and hardly a home --
23 from one in a great metropolis to that in a smallest
24 village -- will be free from destruction. To say that
25 wars of the future will literally threaten the existence,

1 not alone of civilization but of all beings, has become
2 such a truism that its reiteration here seems trite.
3 This problem of peace, which has ever been the desire
4 of the human race, has now reached a position of the
5 crossroads. For the implements of destruction that
6 we already know of, even in what might be called prim-
7 itive development, have reached such proportions that
8 only the human imagination at its highest development
9 is fit to cope with the realities. Our question Mr.
10 President at the crossroads is now literally an answer:
11 "To be or not to be."

12 The answer to this question will require
13 infinite patience and tolerance, and a most earnest
14 effort to reach understandings and agreements. With
15 only one part of the problem are we concerned. What
16 can we do with powers conferred upon us here in this
17 courtroom to contribute in a just and efficient manner
18 to the prevention of future wars?

19 Our purpose is one of prevention or deterrence.
20 It has nothing whatsoever to do with the small meannor
21 purpose of vengeance or retaliation. But we do hope
22 in these proceedings that it is neither impossible nor
23 improbable that the branding of individuals who visit
24 these scourges upon mankind as common felons, and punish-
25 ing them accordingly, may have a deterring effect upon

1 aggressive warlike activities of their prototypes
2 of the future, should they arise.

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W 1 Our specific purpose, therefore, in these
h 2 trials is to confirm the already recognized rule that
a 3 such individuals of a nation who, either in official
l 4 positions or otherwise, plan aggressive warfare, especially
e 5 in contravention of sound treaties, assurances and agree-
n 6 ments of their nations to the contrary, are common felons
& 7 and deserve and will receive the punishment for ages
D 8 meted out in every land to murderers, brigands, pirates
u 9 and plunderers.

u 10 We shall contend that it never was compatible
d 11 with justice or law to initiate murders. We shall contend
a 12 herein that it is no less an offense to plan and initiate
d 13 the destruction of the lives of a million people than it
a 14 is to plan and initiate the destruction or murder of a
d 15 single individual.

u 16 We shall further contend that the having
d 17 taken an oath to support the laws and institutions of a
a 18 nation, the having done it does not create immunity from
d 19 punishment; nor does the device of describing wars, where
a 20 millions of lives are taken, as "incidents" or "episodes";
d 21 nor the claim that they are justified as the furtherance
a 22 of the national aspirations, as they are so interpreted
d 23 by such individuals.

u 24 We shall contend that the facts and circum-
d 25 stances adduced and presented in evidence before this

1 Tribunal will show breaches of valid laws and obligations
2 of the nation of Japan by these individuals so accused,
3 who controlled their government or influenced its
4 action.

5 We shall further show beyond peradventure
6 that these accused, and each of them, well knew that
7 the wars which they were planning, and for which they
8 were preparing, and which they initiated and waged,
9 could result in nothing else than wholesale destruction
10 of human lives, not alone on the field of battle, as
11 stated but in the homes, hospitals, and orphanages, in
12 factories and fields; and the victims would be the young
13 and the old, the well and the infirm -- men, women and
14 children alike.

15 Mr. President, we would emphasize that for
16 many years back, sober-minded, patient and peaceful
17 beings all over the world have been puzzled in their
18 search for the reason why transgressors in the high
19 places of a nation, who bring about these international
20 tragedies, remain unpunished. It is difficult for them
21 to understand the logic and reasoning of those proponents
22 of the principles of international law who conclude
23 that such leaders are beyond the reach of the practical
24 administration of justice. They have been puzzled to
25 understand that method of precedent and logic, or that

1 concept of justice, which permits the lawful destruction
2 of teen-aged youth on the field of battle, but denies the
3 lawfulness of bringing to justice the enemies of peace
4 and the war lords of foreign nations who are the real
5 originators, planners, initiators and designers of the
6 pattern of destruction which brought these youth to their
7 untimely ends.

8 Mr. President, I have no inflammatory purpose in
9 reminding this Tribunal that there has been much blood-
10 shed of the flower of our youth at Nanking, at Pearl
11 Harbor, at Hong Kong, in Malaya, at Guadalcanal, at Iwo
12 Jima, at Okinawa, on the island of Luzon in the Philippines,
13 and in other parts of the world, where great nations
14 gave up the flower of their youth to suppress the other
15 end of the Axis. There was the unloosening of cruel and
16 inhuman forces in China and in other parts of Asia. It
17 was all part of one grand pattern, and the vice of it
18 consisted in the exhibition of utter contempt for the
19 lives of blameless and helpless individuals all over the
20 world.

21 Surely then, this is no mean challenge. If there
22 is no justification for punishment of individuals who
23 have already and in this manner brought civilization to
24 the brink of disaster, then justice itself becomes a
25 mockery.

1 For it is to be recalled that already in these
2 proceedings, each and every accused has lodged an
3 objection to the validity of this trial, which we
4 contend constitutes a clear challenge to the capacity
5 of civilized nations to take effective steps to prevent
6 the destruction of all civilization. For in effect and
7 in essence, the accused have contended that there is no
8 power presently on earth duly authorized to try them,
9 and no just or legal right to mete out justice even
10 stern justice, to these accused, even though it be
11 adequately proved that they participated in a plan or
12 conspiracy, or in and of themselves acted to bring about
13 this aggressive warfare, declared or undeclared, or war-
14 fare in violation of international law, treaties and
15 assurances.

16 In Nuremberg today similar proceedings are taking
17 place, with other accused in the dock. With those we
18 have no concern, other than to indicate to this Tribunal
19 that these accused were in accord with the designs of
20 the accused at Nuremberg and were confederated with them
21 to dominate the world.

22 Literally then, if our observations are sound, there
23 is a vital decision to be made, and this decision may
24 determine the continuance or the end of human life. If
25 this be true -- and we doubt that any thinking person

1 would believe it to be overstated -- we are certainly
2 in a new and terrifyingly critical era. To those who
3 demand precise, well-established precedents for action,
4 we would point out that this is far from a novel idea.
5 From the time of the prehistoric and primeval ages, and
6 continuing through the medieval period right up to the
7 present day, there has always been some process or other
8 for the punishment of the originators of aggressive wars.
9 This method of constituting an international tribunal
10 and permitting such war criminals the privilege of
11 defending themselves and asserting their innocence is
12 but the culmination of the modern and civilized ideals
13 of culture and tolerance which have become crystallized
14 in concrete form.

15 Mr. President, with great humility but much earnest-
16 ness, we approach our task to do our duty this day. For
17 no single just act can be left undone in aid of such an
18 essential purpose. As we of the prosecution view it,
19 a failure to make an earnest effort to contribute our
20 part and a failure of the powers to do every sound thing
21 to put an end to the forces that would destroy the world,
22 would in and of itself constitute an unpardonable crime.
23 Our sole fear is the lack of capacity or ability to per-
24 form this job well. For the obligation itself is a
25 stern one.

1 The allegations contained in this indictment are
2 necessarily so extensive, the period covered so long,
3 the areas involved so great, the accused so numerous,
4 and the power they wielded so far-reaching, that any
5 opening statement attempting to cover in detail every
6 phase of the case we would find it unduly long and
7 burdensome. Moreover, some details mentioned now might
8 become obscure by the time we reach the point of pre-
9 senting evidence thereon. Therefore, in a desire to
10 proceed in an orderly manner which will be helpful to
11 the Tribunal and fair to the accused, the Associate
12 Prosecutors will, as the Court has graciously permitted,
13 present their phase of this case as the schedule
14 approaches the time therefor.

15 Let us briefly consider the Charter which established
16 the authority and jurisdiction of this Tribunal and de-
17 fines the crimes with which these accused are charged.

18 The pertinent provisions are in Section II:

"JURISDICTION AND GENERAL PROVISIONS.

"ARTICLE 5: Jurisdiction Over Persons and Offenses.

21 The Tribunal shall have the power to try and punish Far
22 Eastern war criminals who as individuals or as members
23 of organizations are charged with offenses which include
24 Crimes against Peace. The following acts, or any of them,
25 are crimes which come within the jurisdiction of the

1 Tribunal for which there shall be individual respon-
2 sibility:

3 "a. Crimes against Peace: Namely, the planning,
4 preparation, initiation or waging of a declared or un-
5 declared war of aggression, or a war in violation of
6 international law, treaties, agreements or assurances,
7 or participation in a common plan or conspiracy for the
8 accomplishment of any of the foregoing;

9 "b. Conventional War Crimes: Namely, violations
10 of the laws or customs of war;

11 "c. Crimes against Humanity: Namely, murder,
12 extermination, enslavement, deportation, and other
13 inhumane acts committed before or during the war, or
14 persecutions on political or racial grounds in execution
15 of or in connection with any crime within the juris-
16 diction of the Tribunal, whether or not in violation
17 of the domestic law of the country where perpetrated.

18 "Leaders, organizers, instigators and accomplices
19 participating in the formulation or execution of a
20 common plan or conspiracy to commit any of the fore-
21 going crimes are responsible for all acts performed by
22 any person in the execution of such plan." End of
23 quotation as to the provisions of the Charter.

24 All of these offenses bring about the unlawful and
25 intentional taking of human life so that, as we shall

1 later point out at some length, this section of the
2 Charter creates no new law. Quite to the contrary,
3 it defines criminal offenses of the gravest nature
4 which have long been recognized as illegal in the mind
5 and public conscience of the world. Some of these
6 offenses have been recognized in assemblies part-
7 icipated in by large groups of nations. Others have
8 been outlawed by treaties, declarations and resolutions.
9 Some of them have been in effect designated as criminal
10 acts by assurances. However, by whatever form this
11 state of international law was established or however
12 it became crystallized, it was with the full realiza-
13 tion that the dictates of humanity and the requirements
14 of civilization demanded that these offenses be recog-
15 nized as such and placed beyond the pale of civilized
16 conduct. Indeed, as we believe it quite obvious, all
17 during all the period of time wherein the crimes
18 charged in this indictment occurred, it was well
19 recognized by all nations that the continued existence
20 of civilization required that they come to an end.

21 The eleven prosecuting nations have stated in the
22 indictment, in accordance with the provisions of the
23 Charter, the offenses which they charge that the
24 accused have committed. Already in formal proceedings
25 before this Tribunal in open court the indictment has

1 been read in both English and Japanese in the presence
2 of the accused, and prior thereto, in accordance with
3 the provisions of the Charter, copies of the indictment,
4 including all of the appendices, were translated into
5 the Japanese language and duly served upon the accused.

6 I shall proceed to describe the provisions of the
7 Indictment, generally, in groups. In Group 1, Crimes
8 against Peace as defined in the Charter are charged
9 in thirty-six counts. The Indictment itself consists
10 of an introductory summary, the counts charging the
11 war crimes, and appendices which are in the nature of
12 Bills of Particulars. The offenses are charged in
13 three groups, namely: Group One, Crimes against Peace;
14 Group Two, Murder; and Group Three, Conventional War
15 Crimes and Crimes against Humanity.

16 In the first five counts the accused are charged
17 with conspiracy to secure the military, naval, political
18 and economic domination of certain areas, by the waging
19 of declared or undeclared war or wars of aggression
20 and of war or wars in violation of international law,
21 treaties, agreements and assurances. Count 1 charges
22 that the conspiracy was to secure domination of East
23 Asia and of the Pacific and Indian Oceans; Count 2,
24 domination of Manchuria; Count 3, domination of all
25 China; Count 4, domination of the same areas named in

1 Count 1, by waging such illegal wars against sixteen
2 specified countries and peoples. In Count 5 the
3 accused are charged with conspiring with Germany and
4 Italy to secure the domination of the world by the
5 waging of such illegal wars against any opposing
6 countries. The prosecution charges in the next twelve
7 counts (6 to 17) that all or certain of the accused
8 planned and prepared such illegal wars against twelve
9 nations or peoples, identifying in a separate count
10 each nation or people attacked pursuant thereto. In
11 the next nine counts (18 to 26) it is charged that
12 all or certain accused initiated such illegal wars
13 against eight nations or peoples, identifying in a
14 separate count each nation or people so attacked. In
15 the next ten counts (27 to 36) it is charged that the
16 accused waged such illegal wars against nine nations
17 or peoples, identifying in a separate count each nation
18 or people so waged upon.

19 In Group Two, murder or conspiracy to murder is
20 charged in sixteen counts (37 to 52). It is charged,
21 in Count 37, that certain accused conspired unlawfully
22 to kill and murder people of the United States, the
23 Philippines, the British Commonwealth, the Netherlands,
24 and Niam, by ordering, causing and permitting Japanese
25 armed forces, in time of peace, to attack those people

1 in violation of Hague Convention III, and in Count 38,
2 in violation of numerous treaties other than Hague
3 Convention III.

4 It is charged in the next five counts (39 to 43)
5 that the accused unlawfully killed and murdered the
6 persons indicated in Counts 37 and 38 by ordering,
7 causing and permitting, in time of peace, armed attacks
8 by Japanese armed forces, on December 7 and 8, 1941,
9 at Pearl Harbor, Kota Bahru, Hong Kong, Shanghai and
10 Davao. The accused are charged in the next count (44)
11 with conspiracy to procure and permit the murder of
12 prisoners of war, civilians and crews of torpedoed
13 ships.

14 The charges in the last eight counts (45 to 52)
15 of this group are that certain accused, by ordering,
16 causing and permitting Japanese armed forces unlawfully
17 to attack certain cities in China (Counts 45 to 50) and
18 territory in Mongolia and of the Union of Soviet
19 Socialist Republics (Counts 51 and 52), unlawfully
20 killed and murdered large numbers of soldiers and
21 civilians.

22 In Group Three, the final counts (53 to 55), other
23 Conventional War Crimes and Crimes against Humanity,
24 are charged. Certain specified accused are charged
25 in Count 53 with conspiring to order, authorize and

1 permit Japanese commanders, War Ministry officials,
2 police and subordinates to violate treaties and other
3 laws by committing atrocities and other crimes against
4 many thousands of prisoners of war and civilians be-
5 longing to the United States, the British Commonwealth,
6 France, Netherlands, the Philippines, China, Portugal
7 and the Union of Soviet Socialist Republics.

8 Certain specified accused are directly charged
9 in Count 54 with having ordered, authorized and per-
10 mitted the persons mentioned in Count 53 to commit
11 offenses mentioned in that count. The same specified
12 accused are charged in the final count (55) with having
13 violated the laws of war by deliberately and recklessly
14 disregarding their legal duty to take adequate steps
15 to secure the observance of conventions, assurances
16 and the laws of war for the protection of prisoners of
17 war and civilians of the nations and peoples named in
18 Count 53.

19 Mr. President, in the preparation of this criminal
20 indictment against a large number of individuals who are
21 accused of numerous offenses within the Tribunal's
22 jurisdiction, where the prosecution is composed of
23 eleven great peoples each having its national interests
24 and policies to consider, it was inevitable that the
25 indictment should contain numerous allegations. It is

1 necessary to express the views of each nation and also
2 to assure a conviction of each of the accused under
3 whatever the Tribunal finds to be the true state of
4 facts, provided they are found guilty. Allegations in
5 such a case may appear repetitious and in some instances
6 in the alternative. It is the decision of the Tribunal,
7 however, which is important and which is final both
8 as to facts and law.

9 Summarized particulars in support of the counts in
10 Group One are presented in Appendix A. Dates, places
11 and other details are stated for instances of military
12 aggression, beginning in Manchuria and expanding into
13 many other areas and periods. In Appendix B are
14 collected articles of treaties violated by Japan as
15 charged in the counts for Crimes against Peace and the
16 crime of murder. In Appendix C are listed official
17 assurances violated by Japan and incorporated in Group
18 One, Crimes against Peace. Conventions and assurances
19 concerning the laws and customs of war are discussed in
20 Appendix D, and the particulars of breaches are set
21 forth therein. Individual responsibility for crimes
22 set out in the indictment and official positions of
23 responsibility held by each of the accused during the
24 period with which the indictment is concerned are
25 presented in Appendix E.

S 1 That, if the Tribunal please, is the gist
p 2 of the crimes charged against the accused in this in-
r 3 dictment. The next question to consider is the law
a 4 upon which the indictment is based itself. In the
t 5 first instance, what constitutes cognizable crimes by
& 6 this Tribunal, as we have already set forth, is de-
w 7 fined by the Charter. These may be divided into sev-
o 8 eral general classifications.

f 9 The first offense charged in the indictment
10 is conspiracy. Since this offense is merely named and
11 not defined in the Charter, some definition must be
12 made. This offense is known to and well recognized
13 by most civilized nations, and the gist of it is so
14 similar in all countries that the definition of it by
15 a high Federal Court of the United States may well be
16 accepted as an adequate expression of the common con-
17 ception of this offense:

18 In the case of Marino v. the United States,
19 reported in 91 Fed. 2d, page 691; 113 A.L.R. 975, the
20 United States Circuit Court of Appeals for the Ninth
21 Circuit, in discussing the law of conspiracy, said:

22 "A conspiracy is 'a combination of two or
23 more persons, by concerted action, to accomplish a
24 criminal or unlawful purpose, or some purpose not in
25

1 itself criminal or unlawful, by criminal or unlawful
2 means.'" (Citing cases.) "It is partnership in cri-
3 minal purposes. The gist of the crime is the confed-
4 eration or combination of minds.

5 A conspiracy is constituted by an agree-
6 ment; it is, however, the result of the agreement
7 and not the agreement itself. No formal agreement
8 between the parties is essential to the formation of
9 the conspiracy, for the agreement may be shown 'if
10 there be concert of action, all the parties working
11 together understandingly, with a single design for
12 the accomplishment of a common purpose.'" (Citing
13 cases.)

14 Continuing the quotation:

15 "On the other hand, if the purpose is un-
16 lawful and is carried out either by lawful or unlaw-
17 ful means, the statute is violated."

18 "The purpose of the conspiracy may be con-
19 tinucus, that is, it may contemplate commission of
20 several offenses, or overt acts.

21 "The crime itself is completed when an overt
22 act to effect the object of the conspiracy is done by
23 at least one of the conspirators. An overt act is
24 something apart from the conspiracy, and is 'an act
25

1
2 to effect the object of the conspiracy.'" (Citing
3 cases.)

4 "It need be neither a criminal act, nor the
5 very crime that is the object of the conspiracy. It
6 must, however, accompany or follow the agreement, and
7 must be done in furtherance of the object of it.
8

9 Continuing the quotation:

10 "All of the conspirators need not join in
11 the commission of an overt act, for, if one of the
12 conspirators commits an overt act, it becomes the
13 act of all the conspirators."

14 Continuing the quotation:

15 "In the situation where a conspiracy has
16 been formed, the joinder thereof by a new member does
17 not create a new conspiracy, does not change the status
18 of the other conspirators, and the new member is as
19 guilty as though he was an original conspirator.
20 Where, after formation of a conspiracy one of the
21 conspirators withdraws, such withdrawal neither creates
22 a new conspiracy, nor changes the status of the re-
23 maining member."

24 The next offenses charged run through Counts
25 6 to 36 in various forms; but the same essential ele-
ments are contained in all, that is, "The planning,
preparation, initiation or waging of a declared or

1 undeclared war of aggression," or "the planning, pre-
2 paration, initiation or waging of a war in violation
3 of international law, treaties, agreements or assur-
4 ances."

5 Taking the first section of this definition,
6 the essential element here is "war of aggression." Is
7 this a crime under international law, and has it been
8 so understood during the period of this indictment, or
9 all the period of the indictment? We claim that it is
10 and has been. To reach this conclusion we must estab-
11 lish two things: first, that there is international
12 law covering the subject, and second, that it is a
13 crime under that law.

14 The establishment of these two things is,
15 we believe, among the important questions before this
16 Tribunal. For the first time in history, the Military
17 Tribunal sitting in Nuremberg and this Military Tribunal
18 for the Far East are being asked by the civilized nations
19 of the world to recognize and state by judicial deci-
20 sion these two principles as an integral part of in-
21 ternational law.

22 We believe this Tribunal, under Article 13d
23 of the Charter, will take judicial notice of the fact
24 that there is a large body of international law, known
25 at different times and by different writers as the

1 "common law" or the "general law" or the "natural
2 law" of international law. That it is a living, grow-
3 ing body is well illustrated by the following authori-
4 ties:

5 In 1934, the late and highly respected
6 Mr. Justice Cardozo, speaking for the United States
7 Supreme Court in the case of *New Jersey v. Delaware*,
8 291 U.S. Reports, at page 361, and at page 383 parti-
9 cularly, said:

10 "International law, or the law that governs
11 between states, has at times, like the common law with-
12 in states, a twilight existance during which it is hard-
13 ly distinguishable from morality or justice till at
14 length the imprimatur of a court attests its jural
15 quality. The gradual consolidation of opinions and
16 habits has been doing its quiet work."

17 Lord Wright, Chairman of the United Nations
18 War Crimes Commission, says of this subject in his
19 paper, "War Crimes Under International Law," published
20 in the Law Quarterly Review, I believe in January, 1946,
21 the following:

22 "It is important for those who approach the
23 consideration of this topic to realize what are the
24 nature, the sources and the sanctions of International
25

1 Law. They must not expect to find that they are the
2 same as exist in the systems of Municipal Law, whether
3 the particular law is of the Anglo-American or Common
4 Law type, or is of the Civil Law or the codified class.
5 Either type has the feature that it is law enacted by
6 a central law-making authority such as a Legislature
7 or a Court, and the further feature that there is a
8 standing judicial authority to expound it and a standing
9 executive to give effect to it."

10 Continuing the quotation from Lord Wright:

11 "International Law differs from these nation-
12 al systems because there is no central law-making auth-
13 ority. It may thus be described as the law of the in-
14 ternational community. That community, however, con-
15 sists of a number of independent sovereign nations,
16 each with its own system of National or Municipal Law.

17 "The sources of International Law must,
18 therefore, be sought elsewhere than in the acts of a
19 national law-making authority. In my earlier essay I
20 pleaded to have it recognized that International Law
21 was the product, however imperfect, of that sense of
22 right and wrong of the instincts of justice and the
23 humanity which are the common heritage of all civilized
24 nations. This has been called for many ages 'Natural
25 Law'; perhaps in modern days it is simpler and truer

1 merely to refer to it as flowing from the instinctive
2 sense of right and wrong possessed by all decent men,
3 or to describe it as derived from the principles com-
4 mon to all civilized nations. This is, or ought to be,
5 the ultimate basis of all law.

6 "Just as civilized men (or perhaps any men)
7 living together in society under the most complete
8 system of individual freedom must necessarily suffer
9 the restrictions inevitably imposed on each by the
10 similar freedom enjoyed by their neighbors, so, in
11 the community of nations, the sovereignty (i.e., the
12 freedom and independence of each nation) must be con-
13 ditioned by regard for the like freedom and indepen-
14 dence of the neighboring nations. Modern conditions
15 have been made increasingly apparent the mutual inter-
16 dependence of nations and have led to the concept of
17 the community of nations. Some day there may be a
18 central law-making and law-enforcing body charged with
19 settling the relations between the members of what would
20 then become the community of nations in the full sense.
21 But that time is not yet. International Law represents
22 the imperfect endeavor to develop a body of rules and
23 principles which will go towards establishing a rule
24 of law among the nations, not dissimilar in character
25

1 from the rule of law which is established in greater
2 or lesser degree inside each separate sovereign nation."

3 Continuing the quotation:

4 "Law consists of rules for determining con-
5 duct. Perhaps there may be such rules without legis-
6 lation, without Courts and without executives to give
7 effect to them. There may be the customary or tradi-
8 tional rules which are so familiar that men obey them
9 or act in accordance with them as a matter of ordinary
10 course. The common lawyer is familiar with the idea
11 of customs which develop into law and may eventually
12 receive recognition from competent Courts and auth-
13 orities. But the Court does not make the law, it
14 merely declares it or decides that it exists, after
15 hearing the rival contentions of those who assert and
16 those who deny the law.

17

18 "But International Law is progressive. The
19 period of growth generally coincides with the period
20 of world upheavals. The pressure of necessity stimu-
21 lates the impact of natural law and of moral ideas
22 and converts them into rules of law deliberately and
23 overtly recognized by the consensus of civilized man-
24 kind. The experience of the two great world wars with-
25 .

1 in a quarter of a century cannot fail to have made
2 deep repercussions on the senses of the peoples and
3 their demand for an International Law which reflects
4 international justice. I am convinced that Interna-
5 tional Law has progressed, as it is bound to progress
6 if it is to be a living and operative force in these
7 days of widening sense of humanity."

8 THE PRESIDENT: Would you care for a re-
9 cess now, Mr. Chief Prosecutor, or would you like to
10 go on?

11 MR. KEENAN: I think I could go on a little
12 bit further unless the Court is tired.

13 THE PRESIDENT: I think the Court is de-
14 sirsous of a recess for ten minutes. We recess now
15 for ten minutes.

16 (Whereupon, at 1046, a recess was
17 taken until 1100, after which the proceedings
18 were resumed as follows:)

19 THE PRESIDENT: Mr. Chief Prosecutor.

20 MR. KEENAN: I will resume the quotation
21 of the authorities:

22
23
24
25

G 1 Sir Frederick Pollock, eminent English
o 2 writer, in "The Sources of International Law", pub-
l 3 lished in 2 Columbia Law Review (1902) at pages 511-
b 4 512, in discussing customary law, said:

5 "It is, therefore, impracticable, with
6 one exception to be mentioned, to make any general
7 statement as to the value of treaties and similar
8 instruments as evidence of the law of nations. The
9 exceptional case, which is of increasing frequency
10 and importance, is where an agreement or declaration
11 is made not by two or three states as a matter of
12 private business between themselves, but by a con-
13 siderable proportion, in number and power, of civi-
14 lized states at large, for the regulation of matters
15 of general and permanent interest. Such acts have
16 of late been the result of congresses or confer-
17 ences held for that purpose, and they have been
18 so framed as to admit of and invite the subsequent
19 adhesion of Powers not originally parties to the
20 proceedings. There is no doubt that, when all
21 or most of the great Powers have deliberately
22 agreed to certain rules of general application, the
23 rules approved by them have very great weight in
24 practice even among states which have never ex-
25 pressly consented to them. It is hardly too much
to say that declarations of this kind

1 may be expected, in the absence of prompt and effective
2 dissent by some Power of the first rank, to become part
3 of the universally received law of nations within a
4 moderate time. As among men, so among nations, the
5 opinions and usages of the leading members in a com-
6 munity tend to form an authoritative example for the
7 whole."

8 On July 26, 1934 the Judicial Committee
9 of the British Privy Council, after considering nu-
10 merous early views with respect to the law of piracy
11 and particularly the case of R. V. Joseph Dawson,
12 cited (13 St. Tr. col. 451) which arose in 1696,
13 through Viscount Sankey, L.C., stated:

14 "But over and above that we are not now
15 in the year 1696, we are now in the year 1934. In-
16 ternational law was not crystallized in the 17th cen-
17 tury, but it is a living and expanding code. In his
18 treatise on international law, the English textbook
19 writer Hall (1853-94), the span of his writings, says
20 at p. 25 of his preface to the third edition (1889)
21 (1): 'Looking back over the last couple of centu-
22 ries we see international law at the close of each
23 fifty years in a more solid position than that which
24 it occupied at the beginning of the period. Pro-
25 gressively it has taken a firmer hold, it has ex-

1 tended its sphere of operation, it has ceased to
2 trouble itself about trivial formalities, it has
3 more and more dared to grapple in detail with the
4 fundamental facts in the relations of States. The
5 area within which it reigns beyond dispute has in
6 that time been infinitely enlarged, and it has been
7 greatly enlarged within the memory of living man,"
8 Giving an example.

9 That international courts recognize a
10 general body of international law is evidenced by
11 the two following illustrations: In the 1936 edition
12 of the Statute of the Permanent Court of Internation-
13 al Justice, there appears under Article 38 these
14 provisions:

15 "The Court shall apply:

16 "1. International conventions, whether
17 general or particular, establishing rules expressly
18 recognized by the contesting States:

19 "2. International custom, as evidence
20 of a general practice accepted as law:

21 "3. The general principles of law re-
22 cognized by civilized nations:

23 "4. Subject to the provisions of Ar-
24 ticle 59, judicial decisions and the teachings of
25 the most highly qualified publicists of the various

1 nations, as subsidiary means for the determination
2 of the rules of law. This provision shall not pre-
3 judice the power of the Court to decide a case ex ae-
4 quo et bono, if the parties agree thereto."

5 The Mixed Claims Commission, United
6 States and Germany, established pursuant to the
7 agreement of August 10, 1922, between the two coun-
8 tries, held in Administrative Decision No. II that
9 in its adjudications the Commission would be con-
10 trolled by the terms of the Treaty of Berlin but
11 where

12 "no applicable provision is found in
13 that instrument, in determining the measure of dam-
14 ages the Commission may apply:

15 "(a) International conventions, whether
16 general or particular, establishing rules expressly
17 recognized by the United States and Germany;

18 "(b) International custom as evidence
19 of a general practice accepted as law;

20 "(c) Rules of law common to the United
21 States and Germany established either by statute or
22 judicial decisions;

23 "(d) The general principles of law re-
24 cognized by civilized nations;

25 "(e) Judicial decisions and the teachings

1 of the most highly qualified publicists of all na-
2 tions, as subsidiary means for the determination
3 of rules of law, but

4 "(f) The Commission will not be bound
5 by any particular code or rules of law but shall
6 be guided by justice, equity, and good faith."

7 Having then adverted to the nature and
8 growth of international law, and shown that when
9 many civilized nations have acted in voluntary con-
10 cert on a matter of general welfare it becomes re-
11 cognized as a principle of international law, we
12 shall now attempt to show that the question of ag-
13 gressive war has been considered by so many nations
14 and deliberately outlawed by them that their unani-
15 mous verdict arises to the dignity of a general
16 principle of international law.

17 Long before the occurrence of the acts
18 complained of in this indictment, aggressive warfare
19 had been condemned as illegal. Beginning with the
20 opening of the present century, the civilized world
21 began to place restraints upon the waging of war.
22 At the first Hague Convention, 1899, the nations
23 of the world agreed to settle their disputes by
24 pacific means wherever possible. At the Hague Con-
25 vention No. III, in 1907, this same principle was re-

1 affirmed, and all the nations involved in this in-
2 dictment, including Japan, agreed that "the Contract-
3 ing Powers recognize that hostilities between them-
4 selves must not commence without previous and ex-
5 plicit warning, in the form either of a reasoned
6 declaration of war or of an ultimatum with condition-
7 al declaration of war."

8 By that agreement undeclared wars and
9 treacherous attacks, Mr. President, were branded as
10 international crimes.

11 In 1919 the victorious nations of the
12 last war, including Japan, agreed that violation of
13 international treaties was a justiciable offense.
14 The leading nations of the world, by successive
15 agreements and treaties took another definite step
16 in the evolution of international law, after the
17 close of World War I, by specifically declaring:
18 "A war of aggression constitutes an international
19 crime." That statement was made a part of the
20 Geneva Protocol for the Pacific Settlement of In-
21 ternational Disputes and was signed by the repre-
22 sentatives of forty-eight nations. This was fol-
23 lowed in the Eighth Assembly of the League of Na-
24 tions in 1927 by a unanimous resolution -- unani-
25 mous in almost the same language. Japan was a

1 signatory of both of these instruments.

2 The Sixth Pan-American Conference of 1928,
3 meeting at Havana, Cuba, went a step further when it
4 adopted a resolution on "aggression", the preamble
5 of which specifically states, and I quote: "War of
6 aggression constitutes an international crime against
7 the human species;" and the resolution then proceed-
8 ed to declare: "All aggression is considered illi-
9 cit and as such is declared prohibited."

10 By the Kellogg-Briand Pact, signed in
11 Paris on August 27, 1928, the Contracting Parties,
12 that is, practically the whole community of the
13 civilized world, including Japan, condemned recourse
14 to war for the solution of international controver-
15 sies, and renounced war as an instrument of national
16 policy in their relations with one another. Al-
17 though the text of this Pact does not use the word
18 "crime", it is clear that by renouncing war "as an
19 instrument of national policy", they meant to put
20 the system of aggressive warfare outside the law,
21 to wit: to make it illegal.

22 Mr. President and Members of this dis-
23 tinguished Tribunal, these covenants and agreements
24 cannot be waved away with a slight gesture. They
25 are not, and have never been, mere scraps of paper.

1 Acting in conference with the demands
2 of the public conscience of the world, by 1928 all
3 the civilized nations of the world had by solemn
4 commitments and treaties recognized and pronounced
5 wars of aggression to be international crimes and
6 had thus established the illegality of war as a
7 positive rule of international law.

8 That our conclusion meets with the ap-
9 proval of students of international law is shown
10 by the following quotation from Lord Wright's ar-
11 ticle, the author who has so generously consented
12 to these quotations being incorporated in this
13 statement, "War Crimes Under International Law":

14 "Every nation has the inalienable right
15 to self defense. But a war of aggression falls
16 outside that justification. War is an evil
17 thing. It is no hyperbole to describe the war
18 of 1939 to be one of the greatest calamities that
19 ever befell the human race. To initiate a war of
20 aggression is thus not only a crime, but the chief
21 of war crimes. It differs in its universal
22 scope from the specific offenses which are included
23 in the breaches of the particular laws of war. It
24 is the accumulated evil of the whole. If it were
25 possible to conceive of a war conducted on the most

1 chivalrous and humane methods possible, the initia-
2 tion of the war, if it were an unjust war, would
3 still be a crime. It would still be a crime
4 against peace."

5 Having shown that the law of nations
6 outlaws aggressive war, we must determine what is
7 an aggressive war. An act of aggression de-
8 scribed in Webster's New International Dictionary,
9 Second Edition, Unabridged, 1943, as:

10 "A first and unprovoked attack, or act
11 of hostility; the first act of injury or first act
12 leading to a war or a controversy; an assault; also
13 the practice of attack or encroachment; as, a war
14 of aggression."

15 "A nation that refuses to arbitrate or
16 to accept an arbitration award, or any other peace-
17 ful method, in the settlement of a dispute but
18 threatens to use force or to resort to war."

19 James T. Shotwell, in his book, "War As
20 An Instrument of National Policy", page 58, defines
21 it thus: "The aggressor being that state which
22 goes to war in violation of its pledge to submit
23 the matter of dispute to peaceful settlement, having
24 already agreed to do so."

25 The next division of Crimes against

1 Peace has to do with the planning, preparation,
2 initiation or waging of a war in violation of
3 international law, treaties, agreements or assurances.
4 Here the law is well defined and has been enforced
5 for generations. When two or more nations enter
6 into a solemn covenant or agreement, and especial-
7 ly when it reaches the dignity of a treaty, each
8 nation has always been held to be bound by its
9 terms. Unless that be true, there would be no
10 reason whatsoever for their enactment. To con-
11 tend otherwise would mean that international con-
12 duct has reached so low a level that their sole pur-
13 pose is one of guile and deceit; that the nations
14 affix their names thereto with the purpose of
15 cheating one another. However, this absurd con-
16 tention has been time and again rejected and inter-
17 national courts have recognized a general body of
18 international law.

19 We come now to the point where we shall
20 show the acts of Japan to be among the most treach-
21 erous and perfidious of all time. In 1904, Japan
22 opened the Russo-Japanese War with an attack on the
23 Russian fleet at Port Arthur without notice or warn-
24 ing. The civilized nations of the world recognized
25 that a continuance of this practice would be intol-

1 erable. Under such conditions, every nation would
2 have to be fully armed and on the alert at all times
3 with a consequent stupendous and burdensome expense
4 that would stifle the peaceful, constructive, com-
5 mercial life of its people.

6 The direct result of Japan's treachery
7 in this case was the Hague Convention III in 1907,
8 "Relative to the Opening of Hostilities" in which
9 every nation bringing the charges in this indict-
10 ment, as well as Japan, united in saying in Article
11 I: (as has been previously quoted for another il-
12 lustration)

13 "The Contracting Powers recognize that
14 hostilities between themselves must not commence
15 without previous and explicit warning, in the form
16 either of a reasoned declaration of war or of an
17 ultimatum with conditional declaration of war."

18 Under this agreement, which remained in
19 full force and effect, were the attacks without no-
20 tice or warning on Mukden, Changchun and Kirin on
21 September 18, 1931, and the subsequent, similar
22 attacks on Nanking on December 12, 1937, and on
23 Pearl Harbor, Manila, Davao and Hong Kong on De-
24 cember 7 and 8, 1941 -- under such agreement were
25 these attacks without warning lawful acts? We

1 contend they were not; and we shall show by the un-
2 disputed evidence in this case that each and every
3 attack was made without previous and explicit warn-
4 ing or an ultimatum of any kind; that as a matter
5 of fact at the very moment the attack was made on
6 Pearl Harbor, the Japanese representatives were
7 treacherously negotiating with the United States
8 Government in Washington in an attempt to build up
9 a false sense of security.

10 We shall show that each and every one
11 of the aforementioned attacks, and many others not
12 mentioned at this time, constituted illegal acts,
13 both as acts of aggressive warfare and attacks
14 without warning in violation of treaties. We shall
15 further show that each and every one of the accused
16 named in this indictment played an important part
17 in these unlawful proceedings; that they acted with
18 full knowledge of Japan's treaty obligations and of
19 the fact that their acts were criminal.

20 Do these accused contend these are mere-
21 ly empty promises, and if so, upon what logic do
22 they base this assumption? To put it otherwise,
23 can nations expect to get on one with another and
24 trust each other without keeping solemnly enacted
25 pledges any more than their nationals could be ex-

1 pected to live in orderly existence one with an-
2 other within the confines of their own country with-
3 out respecting the agreements which they make?
4 Could any such procedure lead to anything else
5 than world anarchy? And can such world anarchy
6 be longer tolerated in this day and age? These
7 are the real pertinent inquiries. We have a
8 little doubt as to their answer.

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A 1 It is well recognized law of every civilized
b 2 community that one who engages in a criminal act is
r 3 fully and personally responsible for the natural and
a 4 probable consequences of that act. Can the accused
m 5 deny that the waging of war means the taking of human
o 6 lives? The taking of human life without legal justi-
s 7 fication is, and has been recognized from the dawn
e 8 of history, as murder. We shall show, therefore,
9 that these accused, and each and every one of them,
10 are guilty of the charge of murder as stated in this
11 indictment.

12 Even under the laws of their own land,
13 these accused are guilty. In the Criminal Code of
14 Japan, Chapter XXVI, Article 199, page 148, compiled
15 by Sebald, the crime is defined in more general terms
16 and reads:

17 "Every person who has killed another per-
18 son shall be condemned to death or punished with
19 penal servitude for life or not less than three years."
20 Article 203 of the same Code makes the attempt to
21 kill a person punishable; and Article 201 creates
22 a crime out of the mere preparation with intent to
23 commit murder, even though only one person is con-
24 cerned in it and there are none of the usual ele-
25 ments of conspiracy present, and even though the

1 preparations never reached the stage of an attempt.
2 Since the usual definition of murder in civilized
3 countries is the intentional killing of a human
4 being without legal justification, we should per-
5 haps see what constitutes "legal justification."
6 This justification is usually limited to the de-
7 fense of one's person or property or, perhaps, in
8 the case of an executioner, that he was merely
9 carrying out the order of a properly constituted
10 court.

11 In the case before us, the deaths all
12 occurred as a result of belligerency or war, and
13 since the war was illegal, all the natural and nor-
14 mal results flowing from the original act are also
15 illegal. This is true even under Japanese law.

16 In addition to the reasons already given,
17 the military and naval forces of Japan were bound
18 by "the laws and customs of war" as established
19 partly by the practice of civilized nations and part-
20 ly by treaties, conventions and assurances which
21 were either directly binding upon them or evidence
22 of the established and recognized rules. As evidence
23 of these customs, the Hague Convention IV in October,
24 1907, to which Japan was a party, provides:

25 "According to the views of the High Con-

1 tracting Parties, these provisions, the drafting of
2 which has been inspired by the desire to diminish the
3 evils of war, so far as military requirements permit,
4 are intended to serve as a general rule of conduct for
5 the belligerents in their relations with the inhabitants

6 "It has not, however, been found possible at
7 present to concert stipulations covering all the cir-
8 cumstances which arise in practice;

22 In Section I, Chapter I, Article I of
23 the Annex to the Convention, it provides in part
24 as follows:

25 "The laws, rights, and duties of war

1 apply not only to armies, but also to militia and
2 volunteer corps fulfilling the following conditions:

3 "1. To be commanded by a person respon-
4 sible for his subordinates;

5
6 "4. To conduct their operations in accor-
7 dance with the laws and customs of war."

8 Then follow other provisions with reference to the
9 treatment of prisoners of war and the sick and the
10 wounded which will be specifically referred to sub-
11 sequently when the evidence on Conventional War
12 Crimes is presented. Article XXIII provides in part:

13 "In addition to the prohibitions provid-
14 ed by special Conventions, it is especially for-
15 bidden:

16
17 "(b) To kill or wound treacherously in-
18 dividuals belonging to the hostile nation or army;"

19 Therefore, an attack without warning upon
20 another nation with which Japan was at peace con-
21 stituted treachery of the worst type, and under
22 the provisions of the Hague Convention the killing
23 of any human being became murder.

24 In order to show the full effects of a
25 war of aggression and a war in violation of inter-

1 national law treaties and agreements and assurances,
2 we have referred incidentally to the law covering
3 Conventional War Crimes. These are charged in Group
4 Three in the indictment, but perhaps the aforesaid
5 reference is sufficient as the law covering these
6 articles is well set forth in the Annex to Hague
7 Convention IV already referred to, and other con-
8 ventions and resolutions, and it is established by
9 the customs of war recognized by all civilized nations.

10 The next group of crimes referred to in
11 the Charter is Crimes against Humanity, namely,
12 "Murder, extermination, enslavement, deportation,
13 and other inhumane acts committed before or during
14 the war." It will be observed from the foregoing
15 that the first crime listed is that of murder.
16 Group Two of the indictment deals specifically with
17 this subject in Counts 37 to 52, but the crime of
18 murder appears as the natural consequence of the
19 acts charged in so many other counts that it has
20 been difficult to eliminate at least a partial dis-
21 cussion of it in considering either Crimes against
22 Peace or Conventional War Crimes.

23 Heretofore, we have discussed the crime
24 of murder as resulting from illegal warfare con-
25 fined to aggressive attacks or in violation of

1 treaties when the nations attacked were at peace
2 with Japan. There remains to be considered the
3 slaughter of great numbers of civilians and dis-
4 armed soldiers in numerous cities in China, the
5 Philippines, and the Netherlands East Indies, here-
6 inafter referred to. These killings were contrary
7 to international law even if the warfare in which
8 they occurred had been lawful in itself. The law
9 applicable to these crimes has already been re-
10 ferred to under Conventional War Crimes as being
11 governed to a large extent by the provisions of
12 the Hague Treaty IV with its Annex and the regula-
13 tions attached thereto and the customs of war upon
14 which it is based. These murders followed such a
15 similar pattern over such a wide range of territory
16 and covered such a long period of time, and so many
17 were committed after protests had been registered
18 by neutral nations, that we must assume only posi-
19 tive orders from above; those accused here in this
20 prisoners' dock, made them possible.
21

22 At this time, Mr. President, we are tak-
23 ing up another phase of the paper. Would it be more
24 convenient to consider it in a single interval with-
25 out breaking it up?

THE PRESIDENT: You will finish today, I

1 take it, Mr. Chief Prosecutor?

2 MR. KEENAN: Oh, yes.

3 THE PRESIDENT: You suggest now that we
4 recess until one-thirty?

5 The Court will adjourn until thirty minutes
6 after one.

7 (Whereupon, at 1140, an adjournment
8 was taken until 1330.)

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AFTERNOON SESSION

A 3 The Tribunal met, pursuant to recess,
b
r 4 at 1330.

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

THE PRESIDENT: Mr. Chief Prosecutor.

8 MR. KEENAN: There remains at least one phase
9 of the law to be considered -- perhaps the most
10 important. That is the law pertaining to the indi-
11 vidual liability of these accused.

20 "It is no objection that Congress in pro-
21 viding for the trial of such offenses has not itself
22 undertaken to codify that branch of international law
23 or to mark its precise boundaries, or to enumerate
24 or define by statute at all the act which that law
25 condemns. An Act of Congress punishing 'the crime

1 of piracy, as defined by the law of nations' is an
2 appropriate exercise of its constitutional authority,
3 Article I, Section 8, clause 10, 'to define and
4 punish' the offense since it has adopted by refer-
5 ence the sufficiently precise definition of inter-
6 national law." With citations.

7 And from the same authority:

8 "Similarly by the reference in the 15th
9 Article of War to 'offenders or offenses that . . .
10 by the law of war may be triable by such military
11 commissions,' Congress has incorporated by reference,
12 as within the jurisdiction of military commissions,
13 all offenses which are defined as such by the law
14 of war and which may constitutionally be included
15 within that jurisdiction."

16 The Supreme Court says:

17 "Congress had the choice of crystallizing
18 in permanent form and in minute detail every offense
19 against law of war, or of adopting the system of
20 common law applied by military tribunals so far as
21 it should be recognized and deemed applicable by the
22 courts. It chose the latter course."

23 The prosecution, representative of these
24 eleven nations, contends that these holdings are in
25 accord with the laws enforced domestically in all

1 of their nations. It is quite interesting to observe
2 that even in the interpretation of domestic law, or,
3 as sometimes referred to as municipal law, where
4 legislatures and courts have long been established
5 and operated in a lawful and precise manner, there is
6 still the recognition of the existence of a definite
7 living and growing body of international common law.

8 So we observe that in *Ex parte Quirin*, and
9 in the Yamashita case, also recently decided by the
10 same Tribunal, as well as in many earlier cases,
11 there is definite authority of the highest court of
12 a great nation to support our contention that indi-
13 viduals may be punished by a military tribunal for
14 violations of international law, which, even though
15 never codified by an international legislative body,
16 have been sufficiently developed and crystallized to
17 make them cognizable by courts of justice.

18 Under the usual law of conspiracy heretofore
19 defined, it is always held that every member of the
20 conspiracy is equally liable for every act committed
21 by every other member of the conspiracy in further-
22 ance of the common plan. When we add to this
23 general rule the additional rule that every person
24 is liable for the natural and probable consequences
25 of his criminal acts, we find that these men, who

1 held positions of power and influence in the Japanese
2 Government and by virtue of their positions conspired
3 to, and planned, prepared, and initiated and waged
4 illegal wars, are responsible for every single
5 criminal act resulting therefrom.

6 Aside from the usual rule in conspiracy
7 cases, we find another rule of liability common to
8 all legal systems, which is similar to the conspiracy
9 rule, that all who participated in the formulation or
10 execution of a criminal plan involving multiple crimes
11 are liable for each of the offenses committed and for
12 the acts of each other. All are liable who incited,
13 ordered, procured or conselled the commission of
14 such acts or have taken a consenting part therein.

15 It is the contention of the prosecution
16 that the positions held by these accused is no bar
17 to their being considered as ordinary criminals and
18 felons if the evidence presented to this Tribunal
19 proves beyond a reasonable doubt, in such case they
20 have been parties to crimes for which they should
21 be punished. To the Honorable Members of this
22 Tribunal we emphasize that all governments are
23 operated by human agents, and all crimes are com-
24 mitted by human beings. A man's official position
25 cannot rob him of his identity as an individual nor

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2 Government and by virtue of their positions conspired
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4 illegal wars, are responsible for every single
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20 have been parties to crimes for which they should
21 be punished. To the Honorable Members of this
22 Tribunal we emphasize that all governments are
23 operated by human agents, and all crimes are com-
24 mitted by human beings. A man's official position
25 cannot rob him of his identity as an individual nor

1 relieve him from responsibility for his individual
2 offenses. The personal liability of these high rank-
3 ing civil officials is one of the most important, and
4 perhaps the only new question under international
5 law, to be presented to this Tribunal. That ques-
6 tion is being squarely presented. It will become
7 necessary for this Tribunal, with great respect, to
8 determine whether it will proceed, as other tribun-
9 als and courts in the past have done, to recognize
10 as law a principle that follows the needs of
11 civilization and is a clear expression of the public
12 conscience.

13 Let us now advert to the facts. The indict-
14 ment charges that the accused participated in the
15 formulation or execution of a common plan or con-
16 spiracy to wage declared or undeclared war or wars
17 of aggression and war or wars in violation of inter-
18 national law, treaties, agreements and assurances
19 against any country which might oppose them --
20 against any country or countries which might oppose
21 them -- with the object of securing military, naval,
22 political and economic domination of East Asia and
23 of the Pacific and Indian Oceans, and all countries
24 bordering thereon and islands therein and ultimate-
25 ly the domination of the world.

1 There are two issues involved: (1) the fact
2 of conspiracy; and (2) who were parties to it. The
3 fact of conspiracy will be proved by direct and
4 circumstantial evidence, including the conduct and
5 declarations of the accused and their accomplices.
6 The evidence relied upon to establish the fact of
7 conspiracy, together with additional testimony pro-
8 posed to be introduced, will demonstrate the connect-
9 ion of each accused with the conspiracy charged.

10 As to the first issue, "the fact of con-
11 spiracy," the prosecution is not required to prove
12 the specific date of its inception so long as the
13 proof establishes as a fact that the conspiracy
14 charged existed within the dates specified in the
15 indictment. We propose to prove that for years
16 prior to 1 January 1928 the military in Japan had
17 sponsored, organised and put into effect in the
18 public school system of Japan a program designed to
19 instill militaristic spirit in the youth of Japan
20 and to cultivate the ultra-nationalistic concept that
21 the future progress of Japan was dependent upon wars
22 of aggression, wars of conquest; that as a result of
23 her previous aggressive policy, Japan had acquired
24 vast interests and special privileges in China,
25 particularly in that part known as Manchuria; and

1 that by special treaties Japan had acquired large
2 areas in Manchuria in which she exercised extra-
3 territorial powers.

4 In 1927 the Japanese Government formulated
5 a positive policy toward China which resulted in
6 sending troops to China in May 1927 and in April
7 1928. Political writers and speakers advocated
8 public support of military action in Manchuria. A
9 plan was developed, it will be shown, which antici-
10 pated the creation of an "incident" in Manchuria as
11 a basis for military aggression and included the
12 exertion and exercising of coercive methods in
13 bringing the Japanese Government into accord with
14 military aims and purposes in Manchuria.

15 On September 18, 1931 a provocative occur-
16 rence, which has come to be known historically as
17 the "Mukden Incident," was planned and executed.
18 It was no accident, as the evidence will show. It
19 was followed by immediate military aggression,
20 implemented by more than forty thousand armed troops,
21 well prepared and on the alert for the occasion,
22 resulting in the occupation of the three north-
23 eastern provinces of China and ultimately the setting
24 up of a puppet regime (at all times responsive to the
25 strings pulled from Japan, and formally given the

1 dignity of "recognition" as the so-called State of
2 Manchukuo), and military occupation of the province
3 of Jehol.

4 The real purpose of the invasion, namely,
5 the proprietary interest of Japan in Manchuria, will
6 be shown by the financial, economic and political
7 development which followed. Forces of circum-
8 stances halted the military aggression temporarily
9 at the Great Wall of China, but the designs of these
10 conspirators were partially accomplished. The
11 Tankgu Truce was ultimately effected whereby a
12 demilitarized zone was established in the eastern
13 province of Hopei. But the evidence will clearly
14 disclose that Japan, through these accused, again
15 proceeded to effect the purposes of the conspiracy,
16 this time by means of deceit, bribery and intrigue,
17 and by the use of political and economic means,
18 but, and, whenever necessary, military pressure was
19 always at hand to supplement the foregoing.

20 Thus, if the Court please, the conspiracy
21 proceeded, by the means and methods of divide and
22 conquer, to establish separate autonomous states,
23 allegedly, in Mongolia and North China. The purpose
24 of these maneuvers was to make secure the territory
25 already seized, and to form the basis for a strength-

1 ening and extension of Japanese domination and control
2 of all China until such time as Japan should be ready
3 and prepared to develop further the larger scheme,
4 her Greater East Asia policy.

5 Throughout all this period the pattern and
6 design conforms to a simple plan, although the de-
7 tails vary from time to time. Military incursions
8 were made into the provinces of North China and
9 Mongolia, and Manchukuoan-Siberian border "incidents"
10 occurred. The similarity of methods employed and
11 the repeated use of the word "incidents" to de-
12 scribe the killing of thousands upon thousands of
13 individuals ought to be noted.

14 The westward advance into Outer Mongolia
15 was checked by the Mutual Assistance Pact of 12 March
16 1936 between Outer Mongolia and the Soviet Union.
17 Unsuccessful in her various attempts to unite the
18 provinces of Inner Mongolia and North China in so-
19 called autonomous regimes, Japan was compelled to be
20 satisfied with the conversion of the demilitarized
21 zone into Japanese dominated and controlled Eastern
22 Hopei Anti-Comintern Autonomous Council. Japan,
23 having temporarily been frustrated in her program of
24 expansion, provoked the notorious Marco Polo Bridge
25 Incident on 7 July 1937. This "incident" was

1 patterned after the Mudken affair, and, as was the
2 case in Manchuria, it served as the occasion for
3 large scale Japanese military aggression on many
4 fronts. Major campaigns were conducted, resulting
5 in the occupation of Shanghai in August 1937 after
6 two months of bitter resistance on the part of
7 Chinese troops. The occupation of Nanking was
8 characterized by systematic, merciless slaughter,
9 rape and torture of tens of thousands of prisoners
10 of war, civilians, women and children, and the wanton
11 and wholesale destruction of homes and property
12 utterly beyond any possible military requirements.
13 This action, commonly called the Rape of Nanking,
14 is without parallel in modern warfare.

15 Nanking was only one of the many Chinese
16 cities in which the Japanese sought, as a part of
17 their plan of aggression, to destroy the will of
18 the people to fight by the commission of atrocities
19 of almost unbelievable severity, both as to their
20 character and extent. The evidence will disclose
21 that this inhumane type of warfare was of so general
22 a character, both with respect to geographic distri-
23 bution and of time of commission, as to demonstrate
24 the existence of a pattern or plan of warfare which
25 in fact characterized the Japanese military aggression

1 wherever waged. The evidence will also disclose that
2 opium was used as a military weapon to break the morale
3 of the people and to destroy their will to fight as
4 well as a means of some revenue to finance Japan's
5 armies. The attack on the Panay, Ladybird, and other
6 vessels of neutral powers will be shown as further
7 evidence of wanton and reckless disregard for life
8 and property and also as a demonstration to the
9 Chinese people of the power and efficacy of Japanese
10 arms.

11 The waging of aggressive warfare against
12 China in that part known as Manchuria, as well as
13 in the northern provinces of China, and subsequently
14 in the rest of China, was aided and facilitated by
15 military groups acting in concert with civilians
16 in securing control of government departments and
17 agencies. This control was acquired by various
18 means.

19 The Imperial Ordinance of 1936 provided
20 that the Minister of War must be a General or
21 Lieutenant General on the active list and the
22 Minister of the Navy must be an Admiral or Vice
23 Admiral on the active list. As it was also provided
24 by an Imperial Ordinance that the Cabinet must in-
25 clude the Minister of War and the Minister of the

1 Navy, no Cabinet could be formed without approval of
2 its membership by the War and Navy Ministers, and a
3 Cabinet once formed could not stand unless its
4 policies were in accord with the views of the Army
5 and Navy. This power, the evidence will show, was
6 used by the Army in obtaining domination and control
7 of the government and promoting Japan's policy of
8 expansion by force.

9 Through the express provisions of the
10 Japanese Constitution, there has been a sharp dis-
11 tinction made between matters of general affairs of
12 state and matters pertaining to the supreme command
13 under the Army and Navy. Throughout the life of this
14 conspiracy, the evidence will show, there was a con-
15 stant tendency to enlarge the scope of matters con-
16 tained within the concept of the supreme command at the
17 expense of matters belonging to the general affairs
18 of state.

19 The evidence will show that militaristic
20 cliques and ultra-nationalistic secret societies re-
21 sorted to rule by assassination and thereby exercised
22 great influence in favor of military aggression.
23 Assassinations and threats of revolt enabled the mil-
24 itary branch more and more to dominate the civil
25 government and to appoint new persons favorable to

1 them and their policies. This tendency became
2 stronger and more entrenched until on 18 October 1941
3 the military assumed complete and full control of all
4 branches of the government, both civilian and military.

5 The prosecution contends, and it will intro-
6 duce evidence to prove, that the government, dominated
7 and controlled by militaristic cliques and civilians
8 committed to the policy of war of aggression, resorted
9 to the subterfuge and device of setting up and main-
10 taining a puppet regime in Manchuria, the prototype
11 of many others to follow, in an effort to evade world
12 condemnation and responsibility for violation of
13 specific treaty obligations in the waging of aggres-
14 sive warfare, and in an effort to deceive those sub-
15 jects of Japan who advocated peaceful solution of the
16 Manchurian issues. As evidence of determination on the
17 part of those responsible for Japanese policy to con-
18 tinue the program of expansion by force, Japan withdrew
19 from the League of Nations, decided formally not to
20 adhere to the London Naval Treaty or furnish informa-
21 tion regarding its building program pursuant to the
22 provisions thereof, refused to attend the Nine Power
23 Treaty Conference at Brussels, and fortified the Man-
24 dated Islands in violation of the trust under which
25 she obtained them.

1 Before committing herself to extensive mili-
2 tary aggression against China in 1937, Japan sought and
3 obtained an alliance with Germany which was concluded
4 on 25 November 1936 and is known as the Anti-Comintern
5 Pact, and on the same day concluded a secret treaty
6 with Germany. The evidence will show that Japan pro-
7 claimed to the world that the Japanese-German agreement
8 simply provided for cooperation between the two coun-
9 tries against the Communist Internationale and was
10 not directed against any particular country, when in
11 truth and in fact a secret agreement had converted the
12 pact into a military alliance against the Soviet
13 Union, and that this pact, being a prelude to their
14 joint aggression, was directed not only against the
15 Soviet Union, but also against democratic nations.
16 The evidence will demonstrate that the purpose of
17 this pact was of a two-fold character: first, by the
18 strength of the alliance, to check the Soviet Union on
19 the north, thereby giving Japan freedom of action on
20 the south; second, the pact, in being directed on its
21 face against the Communist Internationale, could be
22 and was used as a pretext and a blind for continued
23 military, economic and political penetration into
24 China. The military provisions were placed in the
25 secret treaty, for the reason that the knowledge of

1 them would likely complicate and delay negotiations
2 being conducted between Japan and the Soviet Union
3 regarding certain proposed fishing treaties, but it was
4 intended that danger of war between Japan and the Soviet
5 Union resulting from military aggression in China could
6 be averted by putting forth the secret treaty at the
7 proper time.

8 It will be shown that Japan expected to
9 break the resistance of China within a few months
10 after the Marco Polo Bridge Attack or Incident, but
11 failing in this, Japan was forced to conclude on 16
12 January 1938 that a major war must of necessity be
13 waged against China if she continued in her program
14 of expansion by force.

15 Beginning in January 1938, Japan and Germany
16 worked for a closer military alliance, which was to
17 become another stage in their plot against democratic
18 countries, Germany desiring an alliance against the
19 world and Japan desiring a stronger alliance, primarily
20 against Russia and secondarily against other countries.
21 Japan desired alignment with Germany and Italy, two
22 rising aggressive powers in Europe which had adopted
23 the policy of "talking peace while preparing for war,"
24 in order to secure for themselves their share in the
25 division of the world which they were going to effect,

1 and in order to create, in the nearest future, condi-
2 tions enabling their realization of the aggression they
3 had initiated in the Far East and assist in bringing
4 the Chinese war of aggression to a successful conclu-
5 sion. The negotiations for such an alliance were
6 suspended upon the conclusion of a non-aggression pact
7 on 23 August 1939 between Germany and Russia.
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1 Japan had increased her efforts to bring to a
2 successful conclusion the war of aggression against China
3 in order that she would be free to expand by force into
4 the areas south of China. Aggressive aims against the
5 Dutch, French and other South Sea territories had also
6 been formulated. Her plans, it will be shown, also in-
7 cluded war against the British Commonwealth, and if
8 necessary against the United States. Under such circum-
9 stances, negotiations for a military alliance with Ger-
10 many and Italy were renewed and with unprecedented speed
11 culminated in the conclusion of the Tri-Partite Pact,
12 27 September 1940. This pact in its essence contained
13 the ultimate development of the plot of the aggressive
14 powers directed towards the division of the world and
15 the establishment of the so-called "New Order," which
16 had for its purpose the extinguishment of democracy
17 throughout the world and the subjugation of all nations
18 by the aggressive states.

19 To accomplish this result, the military
20 hierarchy caused the downfall of the Yonai Cabinet in
21 July 1940, and the posts of Foreign Minister and War
22 Minister in the succeeding cabinet were filled by
23 Matsuoka and Tojo respectively, both of whom were com-
24 mited to the military alliance with Germany and Italy
25 as the capstone of Japan's foreign policy.

1 The evidence will disclose that from the early
2 days of the conspiracy Japan had determined to wage war
3 against the United States for the purpose of executing
4 her Great East Asia policy. By "Great East Asia," as
5 used in the pact, was meant French Indo-China, Siam, Burma,
6 the Straits Settlements, and the Oceania group ranging
7 from the Dutch East Indies down to New Guinea and New
8 Caledonia, with a view to a gradual expansion designed
9 in time to include Australia, New Zealand, India and
10 Eastern Siberia.

11 By the military alliance with Germany and Italy,
12 it was sought to create a new world order in which Japan
13 was recognized as the leader in Greater East Asia, and
14 Germany and Italy as the leaders in Europe. By secret
15 understandings it was contemplated that the signatories,
16 by consultation, had the right to determine whether ac-
17 tion, or a chain of actions, by the United States would
18 be regarded as constituting an "attack" within the mean-
19 ing of the pact, and in the event a decision favorable
20 to an attack were reached, the provisions for military
21 and other aid became automatic.

22 These eleven prosecuting nations and peoples
23 will show that in 1940 and during the first eleven months
24 of 1941 the accused conspirators advanced their plans
25 and preparations with increasing rapidity toward the

1 initiation of war. Evidence will be presented to show
2 that during the four years beginning in November 1941
3 and continuing to September 1945, these accused brought
4 war in its most ruthless and frightful details by land,
5 sea and air to their neighboring peoples of the conti-
6 nents and islands in the Pacific and Indian Ocean areas,
7 on a stage extending more than ten thousand miles from
8 east to west and more than five thousand miles from
9 north to south. As the conspirators moved from their
10 ten years of planning and preparation into the period
11 of initiating and waging of lawless, aggressive war the
12 pattern of the conspiracy became increasingly clear in
13 its details. The conspiracy definitely entered the
14 phase of an all-out alliance with Hitlerite Germany and
15 Fascist Italy for the domination of the world. It will
16 be shown, as in one instance, that on March 2, 1941, the
17 accused Oshima and the German Foreign Minister Ribbentrop
18 agreed on a division of the spoils of conquest between
19 their respective countries; and in later understandings
20 Italy came in for its share, presumably small, of the
21 prospective loot and spoils of war. It will be shown
22 that Japan, Germany and Italy established and maintained
23 close affiliation and understandings with respect to
24 diplomatic relations and military and naval operations.

25 These prosecuting nations will show the un-

1 lawful initiation or commencement of hostilities, by
2 stealth, deception and treachery on December 7 and 8,
3 1941, against the United States of America at Pearl
4 Harbor, against the British Commonwealth of Nations at
5 Kota Bahru, Hong Kong and Shanghai, and against the Com-
6 monwealth of the Philippines at Davao. The deliberately
7 criminal intent in this phase of the conspiracy will be
8 observed in its faithful copying of the attack without
9 declaration of war by Italy against Abyssinia in 1935,
10 by Japan against China in 1937 and by Hitlerite Germany
11 in its "blitzkrieg" attacks against Poland and other
12 nations in 1939, in 1940 and 1941. The evidence will
13 show that Hitler, on December 10, 1941, expressed to the
14 accused Oshima his "joy" because of the Japanese attack,
15 and that Hitler added that the Japanese did the right
16 thing by attacking without a declaration of war and
17 that he himself had done the same thing before and would
18 do so in the future. It will further be shown that in
19 these criminal attacks more than five thousand nationals
20 of the prosecuting nations were unlawfully killed and
21 murdered.

22 The prosecution will present evidence to show
23 that the pattern adopted or accepted by the accused
24 leaders in waging the war was the same pattern as that
25 followed by their fellow conspirators, the Nazi Germans,

1
2 in their habitual tactics of terrorism, ruthlessness
3 and savage brutality, especially against helpless
4 prisoners of war, civilians and survivors of ships
5 destroyed at sea by submarines. It will be shown that
6 the accused likewise received from Hitler and his as-
7 sociates the gift of two submarines and plans based upon
8 German experience in machine-gunning and otherwise de-
9 stroying survivors of torpedoed ships.

10 It is respectfully submitted that the occur-
11 rences and events described, when properly and adequately
12 developed by the evidence, will clearly demonstrate and
13 prove the existence of a continuing conspiracy to wage
14 war or wars of aggression and war or wars in violation
15 of international law, treaties, agreements and assurances
16 for the expanding purposes of acquiring dominion and
17 control in successive stages, with only such delays as
18 consolidation of seized territories and preparation for
19 further aggressions required; of Manchuria, the provinces
20 of Inner Mongolia, North China and the rest of China,
21 French Indo-China, Siam, Burma, Malaya, the Pacific and
22 Indian Oceans, and all countries and islands therein and
23 bordering thereon, and ultimately the domination of the
24 world.

25 If the Tribunal concludes that the evidence
proposed to be introduced establishes "the fact of

1 conspiracy," then the only remaining issue is "who
2 are parties to it." To recite in this opening statement
3 the manner in which each accused participated, in his
4 official and individual capacity, as a leader, organizer,
5 instigator or accomplice in the formulation or the exe-
6 cution of the common plan or conspiracy, would require
7 a statement in detail of the entire evidence in the case.
8 Such would be a task beyond the purpose of this prelim-
9 inary opening statement, and consequently we submit for
10 the present that the proof relating to the fact of con-
11 spiracy and the matters and things set forth in the
12 various appendices to the indictment, when supported by
13 the evidence proposed to be introduced, will establish
14 that these accused participated with others in the common
15 plan and conspiracy and were the major leaders responsible
16 for the formulation and execution of the conspiracy
17 charged.

18 Evidence will be introduced to prove each of
19 the accused guilty, directly, or as responsible military
20 or government officials, or as leaders, organizers, in-
21 stigators or accomplices in the formulation or execution
22 of a common plan or conspiracy, of violation of prac-
23 tically all of the recognized rules and customs of war,
24 as they are frequently termed -- the Conventional War
25 Crimes of Article 5b of the Charter.

1 In the military occupation of Manchuria, of
2 China, of the Philippines, of the Dutch East Indies, of
3 French Indo-China, of Burma, of Guam, of Wake and of
4 other enemy territory occupied by Japan, the evidence
5 will show a repeated and widespread disregard of the
6 responsibilities of some of the accused to secure ob-
7 servance of these principles of law. This evidence
8 includes facts concerning atrocities already known to
9 the world -- the mass destruction of prisoners of war
10 employed in constructing and operating the Burma-Thai-
11 land Railway; the Bataan death march in the Philippines;
12 the Sandakan-Ranay march in Borneo where there were six
13 survivors of an original two thousand soldiers; the
14 massacre of Australian nurses on Bangka Island off
15 Sumatra; and the execution of the B-29 pilots. It in-
16 cludes evidence of other lesser known but equally infamous
17 crimes -- at Balikpapan, Borneo, where in January, 1942,
18 the entire white population was killed when they refused
19 to surrender oil fields undamaged; at Langson, Indo-
20 China, where 450 prisoners of war were machine-gunned
21 in the legs and then executed with bayonets and pick
22 axes; at Lipa in the Philippines where out of 45,000 of
23 its inhabitants 18,000 were executed in February, 1945,
24 and practically the entire male population of several
25 villages exterminated; at the village of Hsiang-Kuo-

1 Chuang in Hopei Province, China, of over four hundred
2 families, destroyed in the Spring of 1943, except for
3 one house and twenty inhabitants; in Liaoning Province,
4 Manchuria, where in February 1942, three thousand
5 Chinese civilians were forced to serve as coolies in
6 constructing military defense works and were then
7 slaughtered to guard the secrecy.

8 Evidence will be introduced of mistreatment
9 of prisoners of war even within Japan, in fact within the
10 city of Tokyo, indicating a deliberate and reckless
11 disregard of the duty of certain of the accused to take
12 the preventive means within their powers. There will
13 be evidence also of the destruction of prisoners of
14 war by taking them into crowded and unmarked, but armed,
15 Japanese prison ships, in spite of their protests, into
16 active combat zones. Lawless attacks upon marked hos-
17 pital ships will likewise be shown, with the resulting
18 deaths not only of wounded soldiers and sailors, but
19 also of surgeons and nurses engaged in relieving their
20 suffering. Evidence of other similar but less known
21 atrocities will be introduced to show that in each area
22 of the Pacific and the Indian Oceans occupied by Japan
23 there was a pattern of mistreatment of prisoners and
24 of other violations of the laws of war which prove a
25 policy planned, initiated, and carried out by certain

1 of the accused involving violations of the laws of war.

2 As further examples of this well-planned design,
3 which will show that these atrocities were not merely
4 accidental or isolated individual misbehaviors, but
5 were the planned results of this national policy, we
6 will show a pattern of murder and mistreatment of civil-
7 ians, as at Nanking, Hankow and Manila, and of illegal
8 attacks and murder of civilians and military personnel
9 as at Pearl Harbor, Hong Kong and Kota Bahru, and other
10 less known incidents. Evidence will be presented to
11 show the circumstances of the massacres by the Japanese
12 armed forces of prisoners of war by burning to death as
13 at Palawan, by stabbing to death or beheading as in the
14 case of prisoners taken from the British ship Behar,
15 and by drowning or disposition by some still undiscov-
16 ered method as in the case of the American Liberty ship
17 Jean Niccollet. Further proof of this established policy
18 will be developed by evidence that identical measures
19 were constantly employed throughout the areas of
20 Japanese occupation to torture prisoners of war and
21 civilians, such as the "water-cure", "electric shock
22 treatment", hanging upside down, prying fingernails,
23 and body beatings.

24 Moreover, we shall show that instances of
25 flagrant violations of the rules of war repeatedly were

1 called to the attention of the Japanese officials,
2 including some of the accused, by the complaining
3 nations through the Protecting Power.

4 Evidence will be introduced of direct orders
5 from certain of the accused in violation of the rules
6 and customs of war, such as the employment of prisoners
7 of war on work directly connected with the war effort,
8 on the Burma-Thailand Railway. Other evidence will be
9 offered to show that some of the accused directly violated
10 the rules of war by the establishment of puppet govern-
11 ments in the Philippines, in China, and elsewhere, and
12 in the violation of other rights of sovereignty of
13 countries temporarily occupied by military forces and
14 in the deprivation of personal and political rights of
15 the inhabitants thereof, for example, in the Philippines
16 and the Dutch East Indies. Other evidence will be
17 offered to show that certain of the accused conspired
18 to assimilate all of the Far East nations and divide
19 into a Greater Japan in violation of the rules and
20 customs of war.

21 Evidence to be offered under Charter Article
22 5a, Crimes against Peace, and 5b, Conventional War
23 Crimes, has now been outlined. It remains to discuss
24 briefly evidence to be presented with particular refer-
25 ence to Article 5c, Crimes against Humanity. It will

1 be observed that the same evidence may constitute an
2 offense under both class A and class B, or even under
3 classes A, B and C.

4 These prosecuting nations and peoples will
5 offer evidence to show that the accused and their sub-
6 ordinates and accomplices conducted the conquest and
7 occupation of conquered nations by criminal violence,
8 unlawful belligerency, and lawless usurpation of sov-
9 ereignty. It will be shown that there was actual real-
10 ization of the objects of the conspiracy, namely, the
11 theft by armed force of territory, food, oil, ships,
12 factories and other property of neighboring peoples and
13 nations in East Asia and in the Pacific and Indian Ocean
14 areas. The unfortunate countries and peoples conquered
15 and overrun by the Japanese armed forces under the
16 command and government of the accused and their
17 associates were treated not in accordance with their
18 rights under international law, but as the loot, booty
19 and spoils of criminal aggressive war. In this respect,
20 again the pattern followed by the Japanese leaders was
21 the same pattern as the one developed and followed by
22 their fellow conspirators in Germany and Italy.

23 Ample evidence will be offered to show that
24 the accused, in their official positions or places of
25 responsibility, exercised their authority over Japanese

1 army and navy forces and over Japanese government
2 bureaus and agencies in such a manner that many members
3 of these armed forces and government agencies committed
4 these offenses as an accepted standard or habitual over-
5 ating procedure, and that honorable and law-respecting
6 Japanese who courageously opposed such practices were
7 themselves terrorized or punished.

8 It will be shown further that the protests,
9 the pleas and the threats of eventual prosecution as
10 war criminals, which were dispatched to these accused
11 and their subordinates by the nations participating
12 in this prosecution, were not answered or were evaded
13 or generally disregarded by the accused and their
14 subordinates.

15 We shall call particular attention to the
16 fact that by Hague Convention IV of 1907, Article 4,
17 Section 1, as set out in Appendix D of the indictment,
18 direct responsibility for prisoners of war is placed
19 upon the governments who are parties to that Convention,
20 including Japan, and every official member of the
21 Japanese Government therefore was and is responsible
22 for these notorious, continued and protested violations
23 of this Treaty.

24 This Tribunal will have noted the necessity
25 in this opening statement of referring to details of the

1 indictment and other particulars that may have seemed
2 tedious and at times repetitious. They have been, as
3 we view it, necessary because of the fact that indivi-
4 duals are being brought to the bar of justice for the
5 first time in history to answer personally for offenses
6 that they have committed while acting in official ca-
7 pacities as chiefs of state. We freely concede that
8 these trials are in that sense without precedent. And
9 we are keenly conscious of the dangers of proceeding
10 in the absence of precedent, for tradition crystallized
11 into precedent is always a safe guide. However, it is
12 essential to realize that if we waited for precedent
13 and held ourselves in a straightjacket by reason of
14 lack thereof, grave consequences could ensue without
15 warrant or justification. So we believe that our observa-
16 tions will be better understood if it is realized that
17 today we are faced with the stark realities involving
18 in a certain sense the very existence of civilization
19 itself. "It is a condition and not a theory which con-
20 fronts us," a great American once said. It is no longer
21 a theory but a fact, as has been so well demonstrated
22 by recent scientific developments, that another war
23 will mean the end of civilization, the destruction of
24 civilization. We are conscious of our obligations.
25 Civilization without justice would be a paradox.

1 To those who observe and note these proceedings,
2 we can say only we shall proceed without thought of
3 criticism or commendation. We have a single obliga-
4 tion. That is that our proceedings shall be in full
5 conformity with the dictates of justice itself. This
6 is a real challenge. "e have attempted to demonstrate
7 in our previous remarks that the acts of these accused
8 were in definite and clear violation of the requirements
9 of human existence as those requirements have been
10 crystallized, imperfectly we admit, in pronouncements
11 of various treaties, conventions and assurances. In
12 these proceedings, we can no more expect absolute
13 accuracy or freedom from error than could have been
14 expected in that voyage of the great mariner who once
15 sailed from the shores of Europe to find a way to
16 Cathay. That a more direct route or a more precise
17 employment of the art of navigation could have saved
18 many weeks is a matter of history. The inspiration
19 and the impulses of his time dictated the necessities
20 of proceeding across uncharted waters, and to a certain
21 extent we bear that handicap. But the necessities
22 demanding the embarkation upon that project were far
23 different. Today we must realize that no sound,
24 reasonable step to bring about world peace can be
25 avoided. The development of the art of destruction

1 has proceeded to such a state that the world cannot
2 wait upon the debating of legal trivialities. The
3 plain reason is that the world itself may be destroyed
4 while these niceties are being debated, developed and
5 decided upon.

6 We suppose that the first universally
7 recognized doctrine is that self-preservation is the
8 first law of nature. Therefore, the eleven nations
9 represented in these proceedings are being asked to
10 do their part to uphold that law. We realize the
11 limitations of deterring influences. It may well be
12 in the future that, regardless of the findings of this
13 Tribunal and its conclusions of law, others, similar
14 to these twenty-six accused now in the dock, with
15 madness and zealousness may concoct, bring forth and
16 even put into effect plans and efforts leading to the
17 destruction of the entire world. This is madness. We
18 are attempting to act with sanity and logic. So we
19 seek the support of the world in our efforts to deal
20 with this problem in a realistic manner.

21 To hold authoritatively that the planning,
22 the preparation, the initiating or the waging of a war
23 of aggression are crimes and that those human beings
24 who bring such destruction upon mankind are common,
25 ordinary felons, might fall far short of the deterring

1 influence which we desire. But, with great respect, we
2 point out to this Tribunal that such a finding may well
3 prevent such individuals as these accused or their
4 prototypes or followers from gaining seats of authority
5 or positions of influence in their own community. This
6 is of no small import.

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W 1 It may be observed that in this discourse
O 2 we have refrained from emphatic reference to each or
f 3 any of these accused except in the rarest instance.
& 4 We have done so with a view of the dignity within
S 5 which these proceedings should be confined. We have
p 6 no particular interest in any individual or his punish-
r 7 ment. They are representative in a certain sense of
a 8 a class and group. They are being prosecuted because
s 9 they were converts to the rule of the tooth and claw.
r 10 We cannot be concerned with their individual concepts,
a 11 their alleged justification on the ground of achieve-
t 12 ment of national ambitions, or their alleged patriotic
a 13 endeavors. We need only if the Court please to take
t 14 a few steps to the top of this building to see what
s 15 they have brought upon their own people. These events
r 16 speak more eloquently than any human individual beings
a 17 could achieve by way of description.

18 The accused have asserted, through their
19 counsel, and still assert, we assume, that they are
20 immune from punishment by reason of the offices they
21 held. That is to say, the accused now claim that
22 having set in motion deliberately and with design,
23 aggressive warfare which envisaged the loss of count-
24 less human lives, as they of course fully understood
25 at the time, it is lawful and proper for the humbler

1 members of their community, subject to their will,
2 to have lost their lives and their properties, while
3 they, the perpetrators, the designers and the archi-
4 tects of this plan of world destruction, when finally
5 brought to bay, should remain free solely by reason
6 of the offices they held. This is an utterly repulsive
7 theory. The Charter holds it untenable, and we submit
8 that all of the morals and logic of human experience
9 denounce it. The evidence will show in this case that
10 at the last moment, with a large part of the munici-
11 palities of Japan already destroyed, with no prospect
12 left but guerilla warfare and utter destruction of their
13 homes, many of these accused still adhered to the view
14 that before capitulation more and more human lives
15 must be destroyed.

16 One of the colleagues of the accused is report-
17 ed to have said to an American officer many years be-
18 fore the launching of the attack upon the United States
19 of America at Pearl Harbor: "We are willing to spend
20 the lives of 10 millions of Japanese. How many lives
21 are you willing to spend?" That is their philosophy.
22 The lives of human beings were held utterly valueless.
23 The purport of this prosecution is that the life of a
24 single individual is of the gravest moment and deserving
25 of all reasonable efforts for its protection. The life

1 of an individual is a matter of sanctity and can never
 2 be lawfully sacrificed for immoral purposes.

3 To show what their philosophy meant when
 4 translated into action, we offer in evidence the
 5 following compiled by the Army Information Section
 6 of the Imperial Headquarters of the Japanese Army,
 7 appearing in the Yearbook 1940-1941:

8 "COMPREHENSIVE RESULTS OF THE JAPANESE
 9 MILITARY OPERATIONS IN CHINA

10 During July 1937-June 1941

11 (Report of the Army Information Section, the
 12 Imperial Headquarters)

13 1. Estimated number of Chinese killed 2,015,000
 14 The loss of Chinese forces, including
 15 death, the wounded, captives,
 16 etc. 3,800,000

17 The booty:

18 Arms	482,000
19 Tanks, cars, motor-trucks	1,475
20 Trains, engines, carriages	2,449
21 Warships and vessels	410

22 2. Results of Air Forces' Activities,
 23 including Nomonhan Incident:

24 Enemy warplanes brought down	1,744
25 Destroyed on the ground	233
26 Total loss of the enemy	1,977

27 3. Losses of the Imperial Army,
 28 including Nomonhan Incident:

29 Killed	109,250
30 Lost airplanes	203

31 CHRONICLE OF THE SINO-JAPANESE HOSTILITIES,
 32 continuing this report, July 1937-May 1941, I quote:

33 1937

34 July 7 -- North China Incident occurred at Marco
 35 Polo Bridge.

1	July 15	-- The Japanese Government decided to dispatch Japanese troops to North China.
2		
3	July 25	-- Hostilities began at Langfang.
4	July 28	-- Commander Katsuki notified the Chinese authorities of the Imperial Army's decision to take free action.
5		
6	July 29	-- Japanese troops began operations against the Chinese 29th Army.
7		
8	August 8	-- Japanese troops entered Peking. Japanese residents in the cities on the Yangtze completed evacuation.
9		
10	August 9	-- The Oyama Incident occurred in Shanghai.
11	August 13	-- Hostilities began in Shanghai.
12	August 14	-- Commander Hasegawa of the Third Fleet of the Imperial Navy, declared the intention of the Imperial Navy to attack the Chinese forces.
13		
14		The air forces of the Imperial Navy made their first attacks on Chinese military centers in Central China, flying over the China Seas from Japan.
15		
16		
17	September 5	-- The entire coast of China was blockaded by the Imperial Navy.
18		
19	September 8	-- The Imperial Army entered Inner Mongolia.
20	December 10	-- General attack on Nanking by Japanese forces began.
21	December 13	-- Fall of Nanking. * * * *
22		
23	<u>1938</u> May 28	-- Air forces of Imperial Navy began attacks on Canton which were repeated for weeks following.
24		
25	October 21	-- Occupation of Canton."

1 For the sake of brevity, we shall not complete
2 this recitation, but, with great respect, remind the
3 Tribunal that this was a report prepared under the
4 authority of the Imperial Army Headquarters and con-
5 tains a resume of each step in the bloody aggression
6 in China from 1937 to 1941.

7 But these accused, in spite of this reci-
8 tation, contend that these were neither aggressive
9 wars nor wars at all, and they dismissed them from
10 such categories by the terminology of "incidents",
11 that is to say, the dead, wounded and captured --
12 these, your Honor, are the results of incidents --
13 the estimated number of Chinese killed -- 2,015,000;
14 the dead, wounded and captives, etc. -- 3,800,000
15 human beings -- does not constitute war. The next
16 headline is extremely interesting because it is en-
17 titled "the booty." Therein lies the real truth.

18 The complete recitation of these cruelties
19 on a mass scale would require more time than this
20 Tribunal and these proceedings would permit. But,
21 as we have attempted to stress in the prosecution,
22 it is our contention that the taking of a single life
23 intentionally without the sanction of law constitutes
24 murder. Therefore, that these perverted, fanatical,
25 malicious leaders should have brought about murder on

1 a vast scale and under the aegis of official position
2 can constitute no defense. To concede the existence
3 of such principles would mean that the enforcement of
4 the law was the enforcement of the shadow and the avoid-
5 ing of the substance.

6 As stated in the Potsdam Declaration, there
7 never was, and is not now, an intent to enslave the
8 Japanese people or destroy Japan as a nation. We must
9 reach the conclusion that the Japanese people them-
10 selves were utterly within the power and forces of these
11 accused, and to such extent were its victims. With
12 the permission of the Tribunal, we would point out
13 that the forces of occupation, who have the full power
14 under the terms of surrender to implement its terms
15 in such manner as they should see fit, have given full
16 opportunity to the Japanese people and to the world to
17 observe the fair manner in which the same is being
18 conducted.

19 The Potsdam Declaration stated, as did the
20 Cairo Declaration, that stern justice should be meted
21 out to war criminals. And in the last analysis in
22 this case we come to the question of what constitutes
23 such war criminals. Could it mean that the war crim-
24 inals were only the soldiers who obeyed the orders of
25 their lieutenants and grand marshals, or must it in

1 justice and reality mean the leaders who were really
2 responsible for what occurred? For the accused in
3 the dock are no contrite penitents. If we are to
4 believe their claims as already asserted in this
5 trial, they acknowledge no wrong and imply that
6 if they were set free they would repeat their aggres-
7 sions again and again. So that from the sheer
8 necessity for security they should be forever restrained.

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1 This requires us in turn to say a few words of
2 general principle and not of detail about the individual
3 accused. Among its other duties, the prosecution has
4 had the particularly heavy task of selecting from the
5 large number of persons who might properly have been
6 charged in this indictment and those whose responsibility
7 for the crimes set forth in the Charter appeared from
8 the available evidence to be the greatest. In order
9 that these proceedings would not become impossibly un-
10 wieldy, it was necessary to limit the number of the ac-
11 cused in this indictment now before this Tribunal. This
12 is not, and will not be, the only trial of Japanese war
13 criminals. It is obvious that a substantial share of
14 the responsibility rested upon persons now dead or in
15 such a state of health they cannot be brought to trial.
16 It may well be that if all the facts were now known to
17 us, there are persons not now on trial whom we might
18 have charged in preference to some of the accused.
19 That is, of course, no defense to any of these accused
20 nor even a relevant subject of inquiry in this proceed-
21 ing. The only question in the case of each one of
22 these accused is whether the case against him as an
23 individual is proved.

24 Although we charge that each of these ac-
25 cused was party to the progressive conspiracy alleged

1 in this indictment and that they were acting in con-
2 cert to commit the other offenses alleged, the evidence
3 will not show that they were a united band who were in
4 agreement with one another, as was the case among the
5 German conspirators. On the contrary, there appear to
6 have been sharp differences of opinion between them
7 and fierce rivalries, upon matters some of which are,
8 and some of which may not be, relevant to these
9 charges. The evidence will show, we believe, that
10 they were all agreed in a determination to expand by
11 aggressive war or threats of aggressive war, the power
12 of Japan in every possible direction. They differed
13 often as to how far it was possible or prudent to go
14 in their aggressive action against any particular
15 country, and as to which country it would be wise to
16 attack first. Some directed their venom primarily
17 against China, some against the Union of Soviet
18 Socialist Republics, some against the British Common-
19 wealth, some against the United States; some advocated
20 the meaner but more prudent course of imitating Hitler's
21 example and attacking the weaker countries first, or
22 attacking those nations which, because they were al-
23 ready involved in the European war, would be hampered
24 in their capacity to resist. Some, who ultimately pre-
25 vailed, were bold as well as aggressive and were pre-

1 pared to fight the greater part of the peace-loving
2 world at one time; others were opposed for a time at
3 least to war against certain countries, particularly
4 the United States, not because of any moral scruples
5 but because they thought that Japan would be beaten.
6 All, of course, and some, even perhaps among these
7 accused, did have a moral sensibility about the in-
8 iquity of what they were planning, as well as fears
9 of the result; but they did it. In our submission
10 all are equally guilty, and from a moral point of
11 view it may be said with a good deal of force that
12 those who had scruples, if there were any, and yet
13 joined in the commission of the crime, are even more
14 to blame than those who were whole-hearted enthusiasts
15 for the aggression.

16 There was another cause of dissension
17 among some of these accused, namely, a three-cornered
18 struggle for power within Japan between the Army, the
19 Navy and the civilians; each group being further divid-
20 ed by factions and rivalries within itself. In our
21 submission it is no defense for any of those who were
22 in general committed to a policy of illegal aggression,
23 to show that at a particular time they resisted a par-
24 ticular act of aggression merely because they did not
25 wish its advocates to become too powerful in the

1 government of Japan.

2 It will be the duty and the endeavor of
3 the prosecution to put before the Tribunal as fully
4 and fairly as possible the relevant facts with refer-
5 ence to the conduct of each accused. But when we do so
6 we ask the Tribunal to bear in mind the considerations
7 which I have stated.

8 It is necessary to emphasize again and again
9 that nations as such do not break treaties, nor do they
10 engage in open and aggressive warfare. The responsi-
11 bility always rests upon human agents, the individuals
12 who have voluntarily sought and achieved by one method
13 or another the power either to enforce such treaties
14 and agreements to maintain the peace, or to break
15 them. Since they have voluntarily achieved and assumed
16 this authority, they themselves, by the dictates of
17 common ordinary justice, must be brought to individual
18 punishment for their acts.

19 There remains finally a recapitulation of the
20 thoughts and notions with reference to the injustice
21 of ex post facto operations. To this we believe there
22 is a short answer. Such wholesome provisions long
23 established in the course of justice of many nations
24 should never be undermined. But this principle of
25 law means simply that a person would not, and should

1 not, be punished for an act which was not a crime at
2 the time it was committed. It was never intended to
3 mean that a person should not be punished for an act
4 which was clearly recognized as a crime by the law to
5 which he was subject. Every offense charged against
6 these accused was well recognized as a crime in inter-
7 national law long before the dates stated in the in-
8 dictment.

9 Again we state that the offenses of these ac-
10 cused resulted in the unlawful or unjustifiable taking
11 of human lives, which constituted murder, the oldest
12 of all crimes, and the punishment that we ask to be
13 inflicted is punishment commensurate with such offense.

14 If in the past there have been instances
15 where such conduct has remained unpunished, and even
16 though a maimed and mangled world permitted this
17 failure of justice, our answer today is that no such
18 neglect can longer be tolerated.

19 A great American four score years ago made a
20 plea on a battlefield to his own people that government
21 of and for and by the people should not perish from the
22 earth. Today, we of the prosecution voice to this
23 Tribunal a like sentiment, but the developments of our
24 times require that we request this Tribunal to take
25 such action, within the confines of justice, towards

1 these individuals as will establish a principle which
2 in some degree serve to prevent not only government
3 but civilization itself from perishing.

4 As a final word to the Tribunal, we reiterate
5 the words of the Supreme Commander for the Allied
6 Powers at the time of the surrender proceedings in
7 Tokyo Bay:

8 "It is not for us here to meet, representing
9 as we do a majority of the people of the earth, in a
10 spirit of distrust, malice or hatred. But rather it
11 is for us, both victor and vanquished, to rise to
12 that higher integrity which alone benefits the sacred
13 purpose we are about to serve, committing all of our
14 people unreservedly to the faithful compliance with
15 the understanding they are here formally to assume."
16 We have attempted and will continue in our effort to
17 act in strict conformity with this pronouncement.

18 MR. KEENAN: As Chief of Counsel, I express
19 my appreciation for the patience and attention of this
20 Tribunal and for the great aid and assistance of my
21 honorable colleagues from allied nations in the ass-
22 istance and preparation of these opening statements.

23 MR. PRESIDENT: Major Furness.

24 MR. FURNESS: As this will take some time,
25 the defense suggests a short recess in order to confer.

THE PRESIDENT: We will adjourn for fifteen minutes.

(Whereupon, at 1455, a recess was taken until 1515, after which the proceedings were resumed as follows, TSUCHIYA, Jun and OKA, Takashi interpreting statements by the President and statements from the floor, Sho Onodera acting as Monitor.)

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

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& THE PRESIDENT: Mr. Furness, the Tribunal
desires to have your objections and those of other
counsel for the defense before they hear your sup-
porting arguments -- the grounds of your objection.

e 7 MR. FURNESS: I didn't hear you, sir.

THE PRESIDENT: The grounds of your objection without the arguments supporting them.

10 MR. FURNESS: Does that mean, sir, the
11 passages to which we object?

12 THE PRESIDENT: Yes.

16 THE PRESIDENT: That objection is over-
17 ruled.

18 MR. FURNESS: Yes, sir. Well, then, sir,
19 I will read the passages to which we object.

20 THE PRESIDENT: Give us the pages and
21 lines on the page.

22 MR. FURNESS: Very good, sir. Page 23
23 of the English text, second full paragraph, third
24 full paragraph and quotation; page 28, the last
25 sentence; page 30, last sentence; page 32, the

1 sentence beginning, "We propose to prove that for
2 years prior to 1 January 1928" until the end of the
3 page; page 33, the first paragraph; page 35, the
4 first full sentence.

5 THE PRESIDENT: Page 35?

6 MR. FURNESS: Page 35, the sentence be-
7 ginning, "This action..."

8 THE PRESIDENT: Can't see it. "This
9 action commonly called The Rape of Nanking" --
10 that paragraph?

11 MR. FURNESS: Right. Page 46, the
12 second and third paragraphs; page 49, the first
13 full paragraph beginning, "It may be observed" --
14 that entire paragraph, and then the next paragraph
15 which begins on 49 and runs over into page 50; page
16 53, the sentence beginning, "If we are to believe
17 their claims," and the next sentence to the end of
18 the paragraph.

19 We also object to the first thirty-two
20 pages on the ground that it is an argument of the
21 question of jurisdiction which has already been
22 ruled on by this Court. We wish to state that
23 other counsel for the defense -- other defendants --
24 may have other objections which they wish to make,
25 and I ask the Court whether they want to hear me

1 further or whether they want to hear the other
2 counsel for the defense?

3 THE PRESIDENT: You understand, of course,
4 that you may attack the opening at a later stage?

5 MR. FURNESS: I understand that, sir,
6 but I thought this was the proper time to do so.

7 THE PRESIDENT: Have you ever known an
8 opening to be attacked along those lines at this
9 stage?

10 MR. FURNESS: Yes, sir.

11 THE PRESIDENT: You have not here indicat-
12 ed that anything that was open could never be proved.

13 MR. FURNESS: I have been requested to
14 merely state the passages to which I object and
15 make no argument, state no grounds, so I don't see
16 how you can expect me to ---

17 THE PRESIDENT: We have read what you in-
18 dicated. This appears to be an attempt to center
19 the whole case for the defense around the opening
20 itself.

21 MR. FURNESS: Has that been translated?

22 LANGUAGE SECTION CHIEF: Will the court
23 reporter on the bench please read that last state-
24 ment back?

25 (Whereupon, the court reporter read

1 the last statement as requested).

2 MR. FURNESS: It is certainly not intend-
3 ed to be so, sir.

4 THE PRESIDENT: So far as the evidence
5 for the prosecution does not support the opening,
6 you will be in a position to attack the opening.

7 MR. FURNESS: We fully realize that, sir.
8 But there are portions which we feel are improper
9 and inflammatory; and, therefore, that we should
10 object at this time; and, therefore, make the ob-
11 jection.

12 THE PRESIDENT: Well, at times, of
13 course, openings do contain high language, but that
14 doesn't follow that you revise the opening at this
15 stage -- all of it.

16 MR. FURNESS: The opening, as I under-
17 stand it, is intended to state briefly the type
18 of evidence which the prosecution intends to pro-
19 duce in order to prove its case. It is our con-
20 tention that this opening does not do so and that,
21 therefore, we should object to it.

22 It is our contention that in many cases,
23 where it does purport to state facts, it states
24 facts which could not -- it purports to **state**
25 things which could not be introduced into evidence,

1 which are improper, which it could not prove, and
2 which would be excluded by the Court.

3 I would also like to point out that in
4 this colloquy between counsel and bench, it is
5 probably using more time than we would if I stated
6 my objections.

7 THE PRESIDENT: I think that is a dis-
8 ingenuous observation. I should have told you, of
9 course, that it is quite frequent you find comment
10 in an opening.

11 The Tribunal has decided not to hear you
12 further on those objections. You are overruled.

13 (To Dr. Kiyose) You, too, must state
14 just what your objections are without attempting to
15 support them.

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A 1 DR. KIYOSÉ: In Mr. Keenan's opening statement
B 2 many phrases which he did not use in English had been
R 3 interpreted in very long phrases into Japanese. Among
A 4 these phrases are some very important statements, so I
M 5 desire that these be omitted from the record.

O 6 THE PRESIDENT: Well, you had better point
R 7 them out, and, if a correction is necessary, it will be
S 8 made in every case.

E 9 DR. KIYOSÉ: I shall do so. Putting small
10 words aside, on page 1, 18a, lines 7 to 8, lines 1 to
11 8 of the Japanese text, this section was not in Mr.
12 Keenan's speech. Still more important, page 172,
13 lines 1 to the end of the page; page 73, lines 1 to
14 5; all these portions were not in Mr. Keenan's speech.
15 Also, the words "stern justice" used in the Potsdam
16 Declaration were, as I pointed out this morning, trans-
17 lated as "severe punishment" in Japanese. This should
18 be translated "stern justice" in Japanese, also.

19 THE MONITOR: Correction. "Stern trial,"
20 in Japanese.

21 THE INTERPRETER: "Stern trial," in Japanese.

22 THE PRESIDENT: These are all small matters
23 which can be corrected by the Language Section.

24 DR. KIYOSÉ: Please, I beg the Tribunal to
25 order these corrections made so that there will be no

1 future misunderstanding.

2 THE PRESIDENT: We will order the interpreters
3 and monitors and referees, and the rest of the Language
4 Section, to look into the objections made by Dr. KIYOSÉ
5 with a view to having any corrections made, but there
6 is no occasion to debate them here.

7 CAPTAIN KLEIMAN: May it please the Tribunal,
8 we are trying to discover just what rules of procedure
9 will be followed during the course of the trial, and I
10 have made a couple of notes which can be mentioned in
11 a sentence. I beg the Tribunal's indulgence for me
12 to state the words --

13 THE PRESIDENT: State your objections, sir.

14 CAPTAIN KLEIMAN: Thank you. My first nota-
15 tion I have marked "Facts irrelevant to the issues as
16 presented by the Indictment," and I have certain pass-
17 ages marked for that.

18 THE PRESIDENT: Indicate the passages more
19 clearly, please.

20 CAPTAIN KLEIMAN: All right. On page 23, your
21 Honor, as has already been pointed out by Major Furness,
22 there is reference to the Russo-Japanese War. The
23 Indictment charges crimes and conspiracies between the
24 dates 1928 and 1945. 1904, being beyond those dates,
25 we contend is irrelevant to the issues as presented by

1 the Indictment.

2 THE PRESIDENT: That is used as evidence of
3 the treachery of the Japanese Government, and we may be
4 invited to judicially notice this incident. These are
5 matters for comment later.

6 CAPTAIN KLEIMAN: I see, your Honor, The
7 same objection I have on page 32, the last paragraph
8 thereof. In that connection also, your Honor, I had
9 marked notations in the speech of statements irrelevant
10 to the issues as presented by the Indictment that are
11 substantially prejudicial to the rights of these accused
12 as they are known throughout the world. May I just
13 give the rest of the notations, and then I can give
14 the passages, sir? Then I had certain passages marked
15 because --

16 THE PRESIDENT: Well, "certain passages"
17 will not help us. What are they?

18 CAPTAIN KLEIMAN: As to irrelevant facts,
19 I have page 4 -- the bottom of page 4 -- the last line
20 and continuing to the top of page 5. That discusses
21 people being puzzled about why transgressors of high
22 places in a nation have not been punished for insti-
23 gation of wars previously, sir.

24 Then on page 19, your Honor, mention of what-
25 ever was provided by the Mixed Claims Commission between

1 the United States and Germany we feel are irrelevant
2 to the law to be applied before this Tribunal because
3 they have not been commonly accepted by civilized
4 nations.

5 Then, sir, on the top of page 27, reference
6 to Section I, Chapter I, Article I of the Annex to The
7 Hague Convention: We feel that those provisions of The
8 Hague Convention are not applicable to these defendants
9 because --

10 THE PRESIDENT: I do not want the argument.

11 CAPTAIN KLEIMAN: All right, just that pro-
12 vision. On page 50, your Honor, the first complete
13 paragraph: One of the colleagues of the accused is
14 reported to have said to an American officer, "How many
15 lives is the United States willing to lose?"

16 On page 52, your Honor, reference -- second
17 complete paragraph refers to American occupation in
18 Japan, of which judicial notice can be taken, but we
19 feel it is irrelevant to the issues before this Tribunal.

20 Then I have made notations with respect to
21 statements as law of matters which are contested law.
22 On page 4, the first paragraph, I am referring to the
23 words, "Already recognized rule," which speaks of the
24 individual criminal responsibility of initiators of
25 aggressive war.

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23 words, "Already recognized rule," which speaks of the
24 individual criminal responsibility of initiators of
25 aggressive war.

1 On page 14, the first and second line,
2 it says that any new member to a conspiracy is as
3 guilty as the original conspirator, and we take issue
4 because we believe they are not guilty of past acts
5 of the conspirators.

6 The whole of the treatise of Lord Wright,
7 for whom I have the highest respect and regard, on
8 pages 15 to 17 inclusive, on the ground that that is
9 law which we wish we had, but is contested. Other
10 international writers believe otherwise.

11 THE PRESIDENT: We cannot allow you to
12 proceed on those lines. You are merely stating you
13 disagree with Mr. Keenan's claims as to what the law
14 is. This is not the stage at which to debate the law.

15 CAPTAIN KLEIMAN: I started off with the
16 principle that I am trying to find out the procedure
17 that we will follow here. May I read from the Manual
18 of Courts Martial on opening statements --

19 THE PRESIDENT: No, definitely not.

20 CAPTAIN KLEIMAN: Then, your Honor, without
21 going through any passages, may I just advise your
22 Honor of the notations I made? First, we move to
23 strike certain words because they are statements --
24 they state as facts matters which are facts which are
25 contested and are to be proved as facts.

1 THE PRESIDENT: You are wasting our time.

2 CAPTAIN KLEIMAN: All right.

3 THE PRESIDENT: Counsel can always state
4 not merely what his evidence is going to be, but what
5 the drift of it is.

6 CAPTAIN KLEIMAN: I will leave that alone
7 then, your Honor. May certain arguments and conclu-
8 sions and opinions -- moving to strike certain of those
9 from the opening speech on the ground that they should
10 not be contained in an opening statement, your Honor, --
11 something that cannot be proved.

12 Then I had in mind a motion to strike certain
13 words and counts from the Indictment; a motion for di-
14 rection of acquittal of the defendant HIRANUMA, a
15 motion for a mistrial.

16 THE PRESIDENT: Well, you know the rule re-
17 lating to motions, do you not?

18 CAPTAIN KLEIMAN: Yes, your Honor.

19 THE PRESIDENT: Well, please carry it out.

20 The points raised by Captain Kleiman may be dealt with
21 at the proper time. This is not the proper time.

22 CAPTAIN BROOKS: If your Honor please, it
23 was agreed not to object during the course of the open-
24 ing statement, and that objections could be entered at
25 a later time. The only objection I have on this state-

1 ment that I will make at this time is as to the offer-
2 ing of what I consider evidence. I would like to have
3 the Court's ruling at this time.

4 On page 50 Mr. Keenan started in to show a
5 philosophy and stated that he would "offer in evidence
6 the following." I believe I would have objected at that
7 time and asked the Court to rule that such matters that
8 were brought in not be allowed at this time. At this
9 time I ask that, starting with paragraph 2 on page 50
10 and continuing through until the end of the uncompleted
11 first paragraph on page 52 -- that that matter was read
12 into evidence, statements which are supposed to have been
13 as from a report of Army Information, which we had not
14 had a chance to examine previously. We did not know
15 whether it was authentic, whether it was true, and the
16 matters in there are not proper matters since they are
17 evidence and are being put in an opening statement.

18 THE PRESIDENT: Do I understand you to say
19 that you cannot refer to evidence in an opening state-
20 ment?

21 CAPTAIN BROOKS: No. I say in this matter
22 he could have stated "we will offer evidence," but I
23 say it is improper for him to offer evidence itself at
24 this time when he says that it is not a complete re-
25 presentation. If the Court please, he says in his

1 own words, "we offer in evidence the following," and
2 goes on for two pages and offers things which are
3 controversial and may not be true.

4 THE PRESIDENT: As I have already said, this
5 is not the appropriate time to raise any of the points
6 that have been mentioned to us by the learned counsel
7 for the accused. They will have their opportunity
8 later.

9 We will adjourn now until Thursday, the 13th
10 of June, at thirty minutes after nine.

11 (Whereupon, at 1600, an adjournment
12 was taken until Thursday, 13 June 1946, at
13 0930).

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